court filed February 11, 2005. The court hereby AMENDS that order to further reflect that, upon consideration by the panel that decided the appeal, as of the date of that order, the petition for rehearing was DENIED. Judge Winter dissents from the denial of rehearing.

The court also AMENDS the February 11, 2005, order to reflect the opinions dissenting from the court's denial of rehearing in banc filed by Chief Judge Walker, Judge Jacobs, and Judge Cabranes. Chief Judge Walker and Judges Jacobs, Cabranes, and Wesley dissent from the denial of rehearing in banc. Simultaneously with this order, Chief Judge Walker is filing a dissenting opinion, in which Judges Jacobs, Cabranes, and Wesley join; Judge Jacobs is filing a dissenting opinion, in which Chief Judge Walker and Judges Cabranes and Wesley join; and Judge Cabranes is filing a dissenting opinion, in which Chief Judge Walker and Judges Jacobs and Wesley join. Other judges of the court have indicated that they expect to file opinions concurring in the denial of in banc rehearing in due course. Further dissenting opinions may also be forthcoming. If further opinions or amended opinions are filed, this order will be amended as necessary to reflect those opinions. [AM]

*****

4/18/05 Judge Sack and Katzmann, C.JJ. with whom Sotomayor and B.D. Parker, C.JJ. join, concurring in the decision to deny rehearing en banc

DATE	PROCEEDINGS
	concurs in a separate opinion, filed.
	*****
5/11/05	Amended published signed opinion filed.
	Hon. Guido Calabresi, Circuit Judge, concurring in the denial of rehearing en banc.
	Hon. Reena Raggi, Circuit Judge, dissenting from the denial of rehearing en banc.

[U.S. Dist. Ct., Dist. of Vermont (Title omitted), Exhibit BBB-4; 2d Cir. Trial Exhibits Volume V:E-1705-12]

Secretary of State

CAMPAIGN FINANCE SUMMARY

GOVERNOR

1978		
Granai (D):	$	49,920.14
Snelling (R):	$	62,648.73
1980		
Clifford (R):	$	223.83
Cullen (I):	$	1,087.42
Diamond (D):	$	136,506.73
O'Connor (D):	$	54,874.41
Potthast(D/LU):	$	552.73
Snelling (R):	$	147,382.82
Woodward (I):	$	6,182.21
1982		
Buttolph (L):	$	386.00
Gottlieb (LU):	$	150.00
Kunin (D):	$	259,350.91
Snelling (R):	$	190,868.45
1984		
Easton (R):	$	547,854.62
Gottlieb:	$	800.00
Kunin (D):	$	408,379.96
Wick (R):	$	238,337.95
Wicker (L):	$	2,605.01
1986		
Gottlieb (LU):	$	16.25
Kunin (D):	$	517,995.69
Sanders (I):	$	57,859.53
Smith (R):	$	508,960.88

1988		
Kunin (D):	$	698,203.00
Bernhardt (R):	$	457,808.00
1990		
Atkinson (L):	$	6,273.25
Welch (D):	$	281,540.50
Snelling (R):	$	447,478.43
1992		
Dean (D):	$	253,527.17
McClaughry (R):	$	139,691.28
1994		
Allen (I):	$	626.21
Brueckner (I):	$	3,596.33
Dean (D):	$	180,144.85
Gropper (R):	$	11,675.89
Jaccaci (PV):	$	720.00
Kelley (R):	$	33,616.04
Lane (GR):	$	714.06
Morse (I):	$	113,426.53
St. Francis (IA):	$	890.00
1996		
Dean (D):	$	124,975.55
Gropper (R):	$	46,241.41
Herbert (LU):	$	454.00
Lane (GR):	$	556.00
Randall (Lib):	$	9,103.13
St. John (I):	$	6,471.66

LT. GOVERNOR

1980		
Garland (R):	$	27,697.67
Kunin (D):	$	35,994.22
1982		
Bouricius (CP):	$	383.10
Ryan (D):	$	13,582.21
Smith (R):	$	22,543.21
Sternbach (LU):	$	148.39
1984		
Carnahan (D):	$	20,422.91
Smith (R):	$	20,805.83
1986		
Auld (Susan) (R):	$	64,997.08
Dean (D):	$	68,424.00
Smith (R):	$	1,992.34
1988		
Zolatas (R):	$	19,733.00
Dean (D):	$	30,725.00
1990		
McCarren (R):	$	68,073.43
Dean (D):	$	121,551.13
Bernhardt (R):	$	153,054.67
1992		
Snelling (R):	$	106,917.98
Wolk (D):	$	69,786.98

1994

Racine (D):	$	100,453.03
Snelling (R):	$	100,614.60

1996

Carroll (R):	$	171,690.00
Coleman (GR):	$	205.66
Racine (D):	$	95,896.88

STATE TREASURER

1980

Hebard (R/D):	$	972.90

1982

Craven (LU):	$	256.61
Hebard (R):	$	1,126.56
Llana (D):	$	1,648.43

1984

Hebard (R):	$	752.60
Stone (CP/LU):	$	30.00

1986

Hebard (R):	$	803.85
Stone (LU):	$	10.00

1988

Walker (R):	$	31,846.62
Ruse (D):	$	27,619.29
Ellis (L):	$	506.21
Craven (LU):	$	726.63

1990		
Ruse (D)	$	33,830.64
Crisman (R)	$	28,255.03
1992		
Ruse (D):	$	82,664.00
Smith (R):	$	18,668.32
1994		
Douglas (R):	$	3,796.36
Schumacher (NL):	$	-0-
1996		
Bushey (GR)	$	-0-
Douglas (R/D)	$	1,815.61

SECRETARY OF STATE

1980		
Babcock (D):	$	17,302.95
Douglas (R):	$	19,461.56
McCann (D):	$	4,026.00
Smith (R):	$	49,127.40
1982		
Douglas (R/D):	$	2,622.53
Wicker (L):	$	179.19
1984		
Douglas (R):	$	3,332.07
Sharp (D):	$	861.07
1986		
Dodge (D):	$	6,990.27
Douglas (R):	$	10,085.01

1988		
Douglas (R)	$	1,431.23
1990		
Douglas (R/D)	$	1,568.07
1992		
Hooper (D):	$	73,194.07
Milne (R):	$	38,764.98
Stokes (R):	$	9,601.00
1994		
Hooper (D):	$	38,430.28
Mendicino (R):	$	14,827.03
Milne (R):	$	25,955.32
Padilla (NL):	$	-0-
1996		
Costanzo (Lib):	$	310.70
De Pierro (GR):	$	13.32
Milne (R/D):	$	2,750.66
AUDITOR OF ACCOUNTS		
1980		
Acebo (R/D):	$	998.99
1982		
Acebo (R):	$	1,648.96
Randlet (D):	$	50.00
1984		
Acebo (R):	$	1,047.23

1986		
Acebo (R):	$	-0-
1988		
Dana (L)	$	48.00
Rose (D)	$	444.00
Acebo (R)	$	2,606.88
1990		
Acebo (R)	$	6,082.08
Boucher (D)	$	27,723.8
1992		
Flanagan (D):	$	40,573.95
Crisman (R):	$	17,528.17
1994		
Flanagan (D):	$	29,127.63
McLaud (NL):	$	-0-
Redden (GR):	$	25.00
Thorn (R):	$	11,631.66
1996		
Baker (Lib):	$	516.36
Flanagan (D):	$	59,592.78
Morrissey (R):	$	26,885.93

ATTORNEY GENERAL

1980		
Easton (R):	$	66,888.00
Skinner (D):	$	54,040.79

1982		
Easton (R/D):	$	22,786.77
Teal (LU):	$	82.69
1984		
Amestoy (R):	$	60,151.84
Condosta (LU):	$	40.00
Lawlor (D):	$	37,579.35
1986		
Amestoy (R):	$	59,411.49
Condosta (LU):	$	.88
1988		
Flanagán (D):	$	135,901.35
Amestoy (R):	$	48,750.10
1990		
Amestoy (R/D):	$	1,900.95
1992		
Amestoy (R/D):	$	4,406.00
1994		
Amestoy (R):	$	3,571.95
Mulcahy (NL):	$	-0-
Talcott (GR):	$	-0-
1996		
Amestoy (R/D):	$	4,526.25
Kingston (GR):	$	.32

[U.S. Dist. Ct., Dist. of Vermont (Title omitted), Exhibit A; 2d Cir. Trial Exhibits Volume I:E-0095-96]

[NO. 64. AN ACT RELATING TO PUBLIC FINANCING OF ELECTION CAMPAIGNS, DISCLOSURE REQUIREMENTS AND LIMITS ON CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

(H.28)

It is hereby enacted by the General Assembly of the State of Vermont:]

*****

H. 28

*****

Sec. 1 LEGISLATIVE FINDINGS AND INTENT

(a) The General Assembly finds that:

(1) Election campaigns for statewide and state legislative offices are becoming too expensive. As a result many Vermonters are financially unable to seek election to public office and candidates for statewide offices are spending inordinate amounts of time raising campaign funds.

(2) Some candidates and elected officials, particularly when time is limited, respond and give access to contributors who make large contributions in preference to those who make small or no contributions.

(3) In the context of Vermont, contributions larger than the amounts specified in this act are considered by the legislature, candidates and elected officials to be large contributions.

(4) Robust debate of issues, candidate interaction with the electorate, and public involvement and confidence in the electoral process have decreased as campaign expenditures have increased.

(5) Increasing campaign expenditures require candidates to seek and rely on a smaller number of larger contributors, often outside the state, rather than a large number of small contributors.

(6) In the context of Vermont, contributions scaled in proportion to the size of the electoral district of the office and up to the amounts specified in this act adequately allow contributors to express their opinions, level of support and their affiliations.

(7) In the context of Vermont, candidates can raise sufficient monies to fund effective campaigns from contributions no larger than the amounts specified in this act.

(8) Limiting large contributions, particularly from out-of-state political committees or corporations, and limiting campaign expenditures will encourage direct and small group contact between candidates and the electorate and will encourage the personal involvement of a large number of citizens in campaigns, both of which are crucial to public confidence and the robust debate of issues.

(9) Large contributions and large expenditures by persons or committees, other than the candidate and particularly from out-of-state political committees or corporations, reduce public confidence in the electoral process and increase the appearance that candidates and elected officials will not act in the best interests of Vermont citizens.

(10) Citizen interest, participation and confidence in the electoral process is lessened by excessively long and expensive campaigns.

(11) Public financing of campaigns, conditioned on an appropriate number of qualifying contributions, will increase citizen participation and will limit the time

spent soliciting contributions, and will reduce the need of elected officials to respond to, and provide access to, contributors. As a result candidates will be freed to devote more time and energy to debate of the issues and elected officials will be able to spend more time responding to constituents and to performing their official duties.

(12) Public financing of campaigns, coupled with generally applicable contribution and expenditure limitations, will level the financial playing field among candidates and provide resources to independent candidates, both of which will increase the debate of issues and ideas.

(13) In Vermont, campaign expenditures by persons who are not candidates have been increasing and public confidence is eroded when substantial amounts of soft money are expended, particularly during the final days of a campaign.

(14) Identification of persons who publish political advertisements assists in enforcement of the contribution and expenditure limitations established by this act.

(15) Because it is essential for all candidates to have their names and positions on issues known to the electorate and because incumbents have a substantial advantage in these areas, public grants and campaign expenditures must be reduced for incumbents.

(b) This act is necessary in order to implement more fully the provisions of Article 8 of Chapter 1 of the Constitution of the State of Vermont, which declares "That all elections ought to be free and without corruption, and that all voters, having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution."

(c) The General Assembly adopts this act to provide

public campaign financing for elections for certain offices, initially the offices of governor and lieutenant governor, to provide restrictions on excessive campaign expenditures, and to provide other regulations of contributions to and expenditures for election to office in the state.

[U.S. Dist. Ct., Dist. of Vermont, Exhibit BB; 2d Cir. Trial Exhibits Volume III:E-1094-1111]

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

MARCELLA LANDELL, et al.,

v. Docket No. 2:99-cv-146

WILLIAM H. SORRELL, et al.,
Defendants
and
MIKE FIORELLO, et al.,
Defendant-Intervenors

NEIL RANDALL, et al.,
Plaintiffs

v. Docket No. 2:99-cv-234

WILLIAM H. SORRELL, et al.,
Defendants
and
MIKE FIORELLO, et al.,
Defendant-Intervenors

[Randall]PLAINTIFFS' RESPONSES TO DEFENDANTS' REQUESTS FOR ADMISSIONS

*****

49. Most candidates for the Vermont House of

Representatives do not use television advertising in their campaigns for election.

RESPONSE: Unable to admit or deny, as Plaintiffs do not have knowledge of what "most candidates" do. Plaintiffs admit that many candidates for the Vermont House of Representatives have not used television advertising in past campaigns.

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80. Most candidates for the Vermont House do not hire paid campaign managers.

RESPONSE: Plaintiffs are unable to admit or deny, as they do not know the practices of "most candidates." Plaintiffs believe the matter is most likely true.

81. Most candidates for the Vermont Senate do not hire paid campaign managers.

RESPONSE: Plaintiffs are unable to admit or deny, as they do not know the practices of "most candidates."

82. Most candidates for the Vermont House do not hire any paid campaign staff.

RESPONSE: Plaintiffs are unable to admit or deny, as they do not know the practices of "most candidates." Plaintiffs believe the matter is most likely true.

*****

84. Campaigns for election to the Vermont House have been more focused on in-person contact with voters than on television and radio advertising.

RESPONSE: Plaintiffs are unable to admit or deny as they do not understand the meaning of "more focused on". Plaintiffs admit that few Vermont House races have in the past used television advertising.

85. Campaigns for election to the Vermont Senate have been more focused on in person contact with voters than on television an radio television.

RESPONSE: Plaintiffs are unable to admit or deny as they do not understand the meaning of "more focused on". Plaintiffs admit that few Vermont Senate races have in the past used television advertising.

*****

87. Television cable companies offer public access channels in many Vermont communities.

RESPONSE: Admitted.

*****

[U.S. Dist. Ct., Dist. of Vermont, Exhibit AA; 2d Cir. Trial Exhibits Volume III:E-1068-88]

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT
BURLINGTON DIVISION

MARCELLA LANDELL, et al. *Plaintiffs,* *v.* WILLIAM H. SORRELL, et al. *Defendants.* and VERMONT PUBLIC INTEREST RESEARCH GROUP, et al. *Defendant - Intervenors* and NEIL RANDALL, et al. *Plaintiffs,* *v.* WILLIAM H. SORRELL, et al. *Defendants.* and VERMONT PUBLIC INTEREST RESEARCH GROUP, et al. *Defendant-Intervenors*	No. 2:99-cv-146

LANDELL PLAINTIFFS' RESPONSES TO DEFENDANT'S REQUESTS FOR ADMISSIONS

The Landell Plaintiffs respond to Defendants' Requests for Admissions as follows:

*****

3. Measured by population, House districts in Vermont are the second smallest in the country.

RESPONSE

Admit

*****

47. The lower spending limit for incumbents in 17 V.S.A. § 2805a helps offset the advantages that incumbents have been thought to enjoy in elections.

RESPONSE

Plaintiffs admit that this specific provision, taken alone, may have this effect. Plaintiffs deny that this effect will necessarily offset countervailing effects from other aspects of the challenged statutes.

48. The spending limits in 17 V.S.A. § 2805a will allow candidates in Vermont to spend less time attempting to raise campaign funds than would be the case if spending were unlimited.

RESPONSE

Plaintiffs admit that this specific provision, taken alone, may have this effect. Plaintiffs deny that this effect will necessarily offset countervailing effects from other aspects of the challenged statutes.

49. Most candidates for the Vermont House of Representatives do not use television advertising in their campaigns for election.

RESPONSE

Admit

*****

51. Although 86% of Vermont House candidates filed affidavits promising to adhere to the voluntary limits on campaign spending in 1994, only 7% of Vermont House candidates did so in 1996, and 9% did so in 1998.

RESPONSE

Admit

52. Although 87% of Vermont Senate candidates filed affidavits promising to adhere to the voluntary limits on campaign spending in 1994, only 16% of Vermont Senate candidates did so in 1996, and 3% did so in 1998.

RESPONSE

Admit

53. Although 90% of candidates for Vermont statewide office filed affidavits promising to adhere to the voluntary limits on campaign spending in 1994, only 16% of candidates for Vermont statewide office did so in 1996, and none did so in 1998.

RESPONSE

Admit

54. Voluntary spending limits have not been adhered to by most candidates for state office in Vermont in the last two election cycles.

RESPONSE

Admit

*****

80. Most candidates for the Vermont House do not hire paid campaign managers.

RESPONSE

Admit

81. Most candidates for the Vermont Senate do not hire paid campaign managers.

RESPONSE

Admit

82. Most candidates for the Vermont House do not hire any paid campaign staff.

RESPONSE

Admit

83. Most candidates for the Vermont Senate do not hire any paid campaign staff.

RESPONSE

Admit

84. Campaigns for election to the Vermont House have been more focused on in-person contact with voters than on television and radio television.

RESPONSE

Plaintiffs object that this request is vague and ambiguous in that it provides no standard for evaluating how a campaign has been "more focused," and also requests a broad categorization of numerous diverse campaigns. Subject to this objection, Plaintiffs admit that some of these campaigns may have been more focused on in-person contact with voters than on television or radio advertising, but deny that all of them have been focused in such a manner.

85. Campaigns for election to the Vermont Senate have been more focused on in-person contact with voters than on television and radio advertising.

RESPONSE

Plaintiffs object that this request is vague and ambiguous in that it provides no standard for evaluating how a campaign has been "more focused," and also requests a broad categorization of numerous diverse campaigns. Subject to this objection, Plaintiffs admit that some of these campaigns may have been more focused on in-person contact with voters than on television or radio advertising, but deny that all of them have been focused in such a manner.

*****

87. Television cable companies offer public access channels in many Vermont communities.

RESPONSE

Admit

*****

89. There are methods of communicating with voters in Vermont that do require any expenditure of money.

RESPONSE

Admit

90. Door-to-door campaigning in Vermont for election to the Vermont House does not require any expenditure of money.

RESPONSE

Plaintiffs admit that some door-to-door campaigning does not necessarily require an expenditure of money, but deny that door-to-door campaigning never requires an expenditure of money.

91. Door-to-door campaigning in Vermont for election to the Vermont Senate does not require any expenditure of money.

RESPONSE

Plaintiffs admit that some door-to-door campaigning does not necessarily require an expenditure of money, but deny that door-to-door campaigning never requires an expenditure of money.

*****

[U.S. Dist. Ct., Dist. of Vermont, Exhibit BB; 2d Cir. Trial Exhibits Volume III:E-1089-93]

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

NEIL RANDALL et al,
Plaintiffs

v. Docket No. 2:99-cv-234

WILLIAM H. SORRELL, et al.
Defendants
and
MIKE FIORELLO, et al.
Defendant-Intervenors

MARCELLA LANDELL, et al.

v.

WILLIAM H. SORRELL, et al. Docket No. 2:99-cv-146
Defendants
and
MIKE FIORELLO, et al.
Defendant-Intervenors

[Randall] PLAINTIFFS' AMENDED AND SUPPLEMENTAL RESPONSES TO DEFENDANTS' REQUESTS FOR ADMISSIONS

NOW COME the Plaintiffs, Neil Randall, et al., through their attorneys, and amend and supplement

their Responses to Defendants' Requests for Admissions, dated January 14, 2000 as follows:

51. Although 86% of the Vermont House candidates filed affidavits promising to adhere to the voluntary limits on campaign spending in 1994, only 7% of Vermont House candidates did so in 1996, and 9% did so in 1998.

RESPONSE: Admitted

52. Although 87% of Vermont Senate candidates filed affidavits promising to adhere to the voluntary limits on campaign spending in 1994, only 16% of Vermont Senate candidates did so in 1996, and 3% did so in 1998.

RESPONSE: Admitted.

53. Although 90% of candidates for Vermont statewide office filed affidavits promising to adhere to the voluntary limits on campaign spending in 1994, only 16% of candidates for Vermont statewide office did so in 1996, and none did so in 1998.

RESPONSE: Admitted.

54. Voluntary spending limits have not been adhered to by most candidates for state office in Vermont in the last two election cycles.

RESPONSE: Admitted.

*****

[U.S. Dist. Ct., Dist. of Vermont, Exhibits U-1, U-2, U-3; 2d Cir. Trial Exhibits Volume III:E-0938-98]

Expert Report of Anthony Gierzynski

Landell v. Sorrell Docket No. 2:99-cv-146

And

Randall v. Sorrell Docket No. 2:99-cv-234

Date: March 13, 2000

/s/
Anthony Gierzynski, Ph.D **[*2]**

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C. Effect of Contribution Limits on Contributors

D. Burlington Mayoral Race

E. Missouri Limits versus Vermont Limits

F. Effect of Out of State Limits

V. Expenditure Limits: Data Analysis

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B. Effect on Legislative Candidates

VI. Conclusion [*3]

I. Personal Background

I am an associate professor of political science (with tenure) at the University of Vermont. I have been a professor at the University of Vermont for over seven academic years. Prior to that I held a research position at the Social Science Research Institute at Northern Illinois University. I earned a doctorate in political science at the University of Kentucky in 1989. I am a nationally recognized scholar on the financing of campaigns, especially state legislative campaigns.

As indicated in my curriculum vitae, my areas of academic expertise are campaign finance, elections, and political parties. Since 1989, I have authored two books and authored or co-authored about a dozen academic articles and book chapters related to the subject of financing elections. The second and most recent book, *Money Rules: Financing Elections in America*, has just been published (in January 2000). Additionally, I have been the co-principle investigator on grants from the National Science Foundation and the Joyce Foundation for the purpose of studying campaign finance at the state and local level. The project funded by the National Science Foundation involved a group of scholars collecting campaign finance revenues from 18 states over 4 election cycles. The Joyce Foundation funded project was a study of the financing of city elections in Chicago, Illinois.

I have been retained as an expert in this matter by counsel for the defendants and defendant-intervenors at a rate of $100 per hour. I previously served as an expert for the state of Vermont on the issue of campaign finance in *Vermont Right to Life Committee, Inc. v. Sorrell* (docket no. 2:97-cv-286) **[*4]**.

II. Introduction

The purpose of this report is to examine the effect of

Vermont's campaign finance law – enacted by the legislature in 1997 under "An Act Relating to Public Financing of Election Campaigns, Disclosure Requirements and Limits on Campaign Contributions and Expenditures" – on campaigns for state offices. More specifically, I will explore the impact the Act's contribution and expenditure limits may have on candidates' and committees' ability to communicate with voters by examining campaign contribution and expenditure patterns in recent Vermont elections.

The 1997 Act provides public funding for candidates running for governor and lieutenant governor. It limits the amount a person, organization, party, or committee may contribute to a candidate, committee, or party. It limits the amount candidates can spend on their campaigns, with lower expenditure limits for incumbent candidates. And, it limits out of state contributions to a total of no more than 25% of a candidate's revenue. In Figure 1 I summarize relevant aspect of the new law.

[Figure I About Here]*

*[Editing Note: This and following bracketed references to Figures/Tables were in the original report, but the Figures/Tables were appended to the report as here.]

Prior to the adoption of the 1997 legislation, individuals, organizations, and committees could give up to $1,000 to a candidate per election. The legislation limits those contributions to $400 to statewide offices, $300 to state senate candidates, and $200 to state house candidates (all limits cover a two-year general election cycle). Prior to the new legislation, there was no limit on out-of-state contributions, no limit on the amount that could be contributed to political party organizations, no limit on the amount that political party organizations could contribute to candidates, and there was a system of voluntary limits on campaign spending. The Act limits

out-of-state contributions to 25% [*5] of a candidate's total revenue. It limits the amount an individual or organization can contribute to political parties to $2,000 in a two-year general election cycle. It limits the amount that party organizations may contribute to their candidates to the amount allowed individuals and political committees. The legislation limits expenditures by nonincumbent gubernatorial candidates to $300,000, lieutenant governor candidates to $100,000, and the other statewide offices to $45,000. Incumbents are allowed to spend only 85% of those limits. Candidates for the state senate are allowed to spend $4,000 (plus $2,500 for each additional seat in the district) and state house candidates are allowed to spend $2,000 ($3,000 if the candidate is running in a two-member seat). Incumbent senate and house candidates are allowed to spend 90% of those limits. Before turning to the analysis of the effects the limits in the 1997 law may have on candidates, political committees, and political parties, it is important to discuss the context in which the new law will operate, that is, Vermont's history with regard to regulating campaign finance and the nature of elections in this state.

A review of Vermont's history that the 1997 Act is not a unique occurrence; indeed Vermont has had a history of regulating campaign finance behavior. In 1916 Vermont voters approved (in a referendum) a primary election and corrupt practices act that had been passed by the legislature in the previous year.[1] The law established a fine for purchasing votes and required that primary candidates file campaign finance reports with

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[1]The material on the history of campaign finance law in this paragraph comes from Paul S. Gillies article, "The Disinfecting Light: The Public Disclosure of Campaign Finances," in *We Vermonters: Perspectives on the Past*, Michael Sherman and Jennie Versteeg, editors (Montpelier, VT: Vermont Historical Society, 1992).

the state. In 1961 the state set campaign spending limits for primary candidates (the Republican dominance of state politics at the time meant that the primary, **[*6]** not the general election, was the determining contest and thus the one that needed regulation).[2] The $7,500 expenditure limits established in that act lasted until the state revised the law in 1972. In 1972 the legislature enacted a law that limited contributions from "a single source, except a contribution from a political party" to $1,000.[3] It limited contributions made to political parties to $1,000. And, it limited gubernatorial candidates' expenditures to $40,000 per election and other candidates to $20,000 per election.[4] The 1972 spending limits were repealed in response to the Supreme Court's *Buckley* decision. In 1982, 1986, and 1988 the legislature made minor changes in the law, mainly concerning disclosure requirements.[5]

Whereas the acts of the legislature and the public show Vermonters have long been concerned over the corrupting influence of money in the state's politics, Vermont has been and still is a state where candidates can be successful without spending large sums of money. Unlike elections in many other states, elections in Vermont are contests where candidates of lesser financial means can still effectively communicate with voters and win. This is due largely to the small size of the state and the low costs of campaigning here. Vermont ranks 49th

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[2]Public Act 178 – "An Act to Limit the Amount That May be Spent by and for a Candidate for Public Office in a Primary Election for State Office."

[3]Public Act 259 – "An Act to Add 17 V.S.A. Chapter 36 Relating to Limitations on Election Expenses in Primary and General Elections."

[4]Public Act 259.

[5]Paul S. Gillies, "The Disinfecting Light: The Public Disclosure of Campaign Finances."

out of the 50 states in population.[6] It is served by a relatively inexpensive media market. Smaller media market stations (media markets are ranked based on the number of TV viewing households) charge less for advertising **[*7]** and the Burlington-Plattsburg media market is ranked 91st nationally; for sake of comparison, Boston is 6th.[7] Because of its small size and culture of intimate, participatory politics, elections are not dominated by media-centered battles as they are in larger states, including our neighbor to the west. "Retail politics" still dominates in Vermont; most candidates' electoral fortunes are heavily dependent on one-on-one contact with voters in door-to-door campaigning. As one former prominent state politician put it,

> A massive war chest isn't necessary, nor does there have to have an entourage of help to get elected. If someone dedicates approximately seven weeks of work, a minimum of brain labor, and a budget that can reach as low as a couple of hundred dollars he or she can, everything else considered get elected. . .
>
> The major component of any successful campaign is basic person-to-person contact. That is necessary no matter what office a person runs for or from what area they are running.[8]

State house candidates campaign in districts with populations of either slightly under 4,000 (for single member districts) or just under 8,000 (for two-member

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[6]U.S. Census Bureau, http://www.census.gov/population/estimates/state/st-99-1.txt.

[7]*Television & Cable Factbook* (Washington, D.C.: Television Digest, Inc., 1999).

[8]Ralph Wright, *All Politics is Personal* (Manchester Center, Vermont: Marshall Jones Company, 1996), p. 233.

districts). Only New Hampshire has legislative districts with smaller populations.[9] The typical number of voters in these districts is smaller – once considering those of voting age and the level of voter turnout. The average number of votes received by winning candidates in single-member house districts in 1998 was 1022 (1585 for winning candidates in two- **[*8]** member districts). With such small districts it is feasible to contact enough voters personally, making money unimportant. This is reflected in the fact 55 of the 150 victorious state house candidates in 1998 (36.7% of all House winners) did not raise or spend above the $500 threshold for filing a campaign finance report. Only about 14% of house winners (in both single-member and two-member districts) spent more than $2,000. Among these low spending winners were a significant number of winning challengers (9 in all), such as George Cross and Kenneth Atkins who both beat out an incumbent for the Chittenden-1-3 district while not spending or raising enough to need to file a campaign finance report.

State senate districts are larger than house districts, with about 19,600 constituents per senator (so 2 member senate districts would have twice that amount; Chittenden County, the largest with 6 seats has a population of approximately 117,800). These senate districts, however, are still at the bottom end of district size in the U.S. Going door to door is still a crucial element of Senate campaigns. Media campaigns, especially television, are not efficient in most senate districts because of the lack of congruence between media markets and district boundaries (because candidates purchasing media time pay to reach many voters that are not in their

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[9]Anthony Gierzynski, "Elections to State Legislatures," in *Encyclopedia of the American Legislative System*, ed. Joel H. Silbey (New York: Scribner's, 1994), pp. 436-437.

districts).

For statewide candidates, campaign expenditures and mass media buys are more important, but not the most important factor in a candidate's success. The relatively small size of Vermont (its population is smaller than the population of one *state* senate district in California) means direct contact with voters is still important, as are voter **[*9]** mobilization programs run by the political parties.[10] Additionally, media organizations within the state – especially Vermont Public Radio, WCAX-TV and WPTZ – provide statewide candidates with many forums that allow the candidates to communicate substantive and unfiltered messages to the Vermont public for free.

This culture of "intimate politics" is reflected in the small amounts of money spent in Vermont campaigns over the past 3 election cycles. In Table 1 I present the expenditure levels for major party candidates for governor and lieutenant governor and the mean and media expenditures for major party candidates for the other statewide offices and state legislative candidates in the 1994, 1996 and 1998 general election. The winning candidate for governor spent under $200,000 in the 1994 and 1996 campaigns, and $435,237 on his 1998 campaign. One political scientist's analysis of the average costs of gubernatorial campaigns in the 50 states, found Vermont to rank 49th (spending analyzed between 1978 and 1993).[11] Spending by candidates for lieutenant governor averaged about $115,000. Two of these races were extremely competitive. The average for the other state-

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[10]A large part of the Democrats' electoral success in 1998 was the voter identification and mobilization program run by the state party.

[11]Thad Beyle, "Governors: The Middlemen and Women in Our Political System," in *Politics in the American States: A Comparative Analysis* (sixth edition) eds. Virginia Gray and Herbert Jacob (Washington: Congressional Quarterly Press, 1996), pp. 216-217.

wide races all were under $30,000 with the exception of the losers in 1998.

In terms of house campaigns, it is important to note that 35.5 percent of state house candidates in 1998 did not file campaign finance reports, meaning they did not receive or expend any amounts in excess of $500 (the threshold over which one is required to file a report). For purposes of this analysis, those non-filing candidates were **[*10]** assigned expenditures of $500, thus conservatively inflating the averages over what is probably actually spent. The average winner and loser in house campaigns spent well under $2,000 in all three elections.

Given the nature of Vermont elections the campaign finance regulatory system established by the 1997 Act appears quite reasonable. (This initial impression is born out by the more rigorous and detailed analysis to follow.) The expenditure limits and contribution limits are proportionate to the amount of financial activity that takes place within the state's elections. Sums lost to the fact that a candidate must take smaller checks can be easily made up for by other contributors (or by couples writing separate checks). This is most obvious with house contests. An average house candidate needs only 6 contributions of the $200 maximum to fund a campaign. But it is also true for other races as well. For the most expensive race, the gubernatorial race, the $400 limit means candidates in the 1998 election would have had to solicit 632 to 1,089 contributions at that level to have raised as much as they spent (632 contributions for Dwyer, 1,089 for Dean). The 1,089 contributions Dean would have had to raise are in comparison to the 1,684 contributions he actually collected for the 1998 election.

Under the previous law, the $1,000 limits left Vermont susceptible to growing interest group influence – a few interests could easily fund most legislative campaigns (2 would do for state house campaigns under the

old law). Such a dependence on so few sources for campaign funding leads to questions about the independence of representatives from those donors' interests. **[*11]**

III. Methodology

The analysis that follows is based on campaign finance reports filed with the Vermont Secretary of State's Office for the 1994, 1996, and 1998 elections. I constructed data files with the assistance of students at the University of Vermont.[12] The files included relevant candidate electoral information – votes, incumbency, district, etc. – total contributions (as best ascertained from the candidates' and committees' last report or from totaling itemized and non-itemized contributions), total expenditures (as best ascertained from the candidates' and committees' last report or from totaling itemized expenditures), itemized contributions, and itemized expenditures. Data cover the two-year election cycle for each election. Much of the analysis focuses on major party candidates since third party candidates or independents failed to raise or spend much during the 1994 to 1998 elections.

It should be noted that the analysis that follows is based on a worst-case scenario. By projecting previous patterns of campaign finance behavior onto future elections, the analysis assumes that there will be no adjustments in fundraising techniques or in patterns of giving under the new law. This results in estimates of the effect of the new law that may overstate the law's burden on candidates and contributors since it is quite evident

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[12]The National Institute on Money in State Politics computerized the 1998 contributions to candidates under the supervision of Samantha Sanchez. I read these data using SPSS/PC, checked and cleaned the data for my purposes (the data was accurate and complete), and aggregated the multiple contributions made to one candidate.

from the history of campaign finance regulation that candidates and campaign committees adapt quickly to changes in campaign finance law. Other, more specific assumptions that are made during the analysis follow the same principle. For example, **[*12]** candidates who did not file campaign finance reports are assumed to have raised and spent $500 on their campaign, which is the maximum they could raise or spend without being legally required to file a report of the campaign finance activity.

IV. Contribution and Out of State Limits: Data Analysis

The questions that arise from the limits on contributions enacted in the 1997 law are 1) whether the limits hinder candidates' ability to raise funds and thus their ability to communicate with voters, and 2) whether those limits have a significant impact on most donors' contributions. This section examines the contribution patterns in the 1994, 1996, and 1998 elections in order to answer these questions. Based on previous patterns, the analysis does find that the 1997 Act will have a minimal effect on both candidates' ability to raise funds and on individuals' and committees' ability to give to campaigns.

To analyze the effect of the law on contributions, I aggregated multiple contributions from each source to candidates, parties, or committees. Contributions from couples were **not** divided in two, even though under the 1997 Act a couple that made an $800 contribution to a candidate for statewide office in the past could contribute $400 each in 2000 and thus see no reduction in their ability to give. This decision thus overestimates the assessment of the impact of the contribution limits. Contributions from the candidate themselves were not included in the analysis as the contribution limits do not apply to such contributions. No attempt was made, however, at identifying immediate family members that

may have contributed; this, again, will overestimate the impact of the limits. Since political party contributions were previously unlimited, the analysis will, in places, treat party contributions separately. **[*13]**

To assess the impact the Act's contribution limits may have on candidate financing, one can compare past contributions with the new limits. Overall, only a small proportion of contributions made during the last three elections would have been affected by the new limits that are established under the 1997 Act. Table 2 lists the number and percent of contributions in the past three elections that were in excess of the new limits for statewide candidates, senate candidates, house candidates, party committees, and political committees. The percentage of all contributions received by statewide candidates in the past three elections that were greater than the new limits never got as high as 10%. The percentage of all contributions received by senate and house candidates were well below 10% in 1994 and 1996. In 1998 the percentage increased to 17.2% for senate candidates and 11.9% for house candidates, mainly due to a large increase in party funding activity that year. Party organizations and political committees receive an extremely small percentage of their contributions in excess of the new limits – 2.4% for parties and 0.6% for political committees in 1998.

If we exclude party contributions from the analysis – since political parties operated under no contribution limits in these elections – the percentage of contributions greater than the limit is smaller, especially in the case of senate and house candidates in the most recent election. The percentage of nonparty contributions over the limits for senate candidates in 1998 was 14.2% and for house candidates 6.5%.

Thus, looking at the overall pattern of contributions it is clear that the contribution limits set by the legisla-

ture in 1997 would affect only a small percentage of contributors.

[Table 2 About Here] **[*14]**

A. Effect of Contribution Limits on Statewide Candidates' Finances

In Tables 3 through 5 I show the effect of the contribution limits on the finances of statewide candidates. The tables list the number of contributions from individuals and committees that exceed the new limits, the percent of those contributions that exceeded the limits,[13] the amount in excess of the limits (calculated by subtracting the limit from the large contributions and summing the results), and the percent of a candidate's revenue represented by the amount in excess of the contribution limits.[14]

[Table 3 About Here]

Of all of the contributions received or solicited by candidates from individuals and political committees, only a small proportion would have exceeded the limits. In the most expensive campaign of 1998 – the gubernatorial race – 7.8% of Howard Dean's and 13.4% of Ruth Dwyer's contributions exceeded the limits. Only 2 of the

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[13]To calculate the percent of contributions over the limits, I divided the number of contributions over the limit by the total number of itemized contributions plus an estimate of the unitemized contributions. I estimated the number of unitemized contributions by subtracting the total of itemized contributions from the candidates' total revenues and then dividing that total by 100 (the level at which contributions must be itemized). This method of estimating unitemized contributions is a conservative one since it is highly unlikely that all contributions that were not itemized were as large as $100, thus the method undoubtedly underestimates the number of unitemized contributions.

[14]For these calculations, candidate's revenue included amount raised during the election cycle and excluded the amount a candidate carried over from a previous campaign.

11 major candidates for statewide office in 1998 received more than 10% of their contributions in amounts over the 1997 limits – Dwyer and Snelling. None of the third party or independent candidates received any contributions larger than the contribution limits. A similar pattern is found in the 1996 election with only one candidate getting greater than 15% of his contributions in large contributions – John Carroll whose large contributions constituted 15.6% of all his contributions. Only one of the minor candidates received any **[*15]** money in an amount over the limit – St. John had one contribution that was $100 over the limit. In 1994 the percentages of contributions exceeding the limit appears high for a few candidates – 25.4% for Kelly, 40.5% for Hooper, and 43.3% for Flanagan – due mainly to the fact that these candidates apparently did not solicit many contributions; this point is evident by looking at the absolute number of large contributions – 15 for Kelly, 28 for Hooper, and 13 for Flanagan. Again, no third party candidate or independent received any contributions over the contribution limit in 1994.

Thus the number and percentage of contributions received by statewide candidates that would have been affected by the 1997 law are small. Tables 3 through 5 also show the amount of funds raised over the limits and what percentage of a candidate's revenue those funds represent. Here we see much more variation among candidates. For Governor Dean, for example, the amount of money raised over the limits have constituted from 47.6 to 33.1% of his revenues in the past three elections. This is due in large part to the large sums of money the governor has raised out of state from his colleagues in medicine and from other interests around the country; a result that may be tied to his interest in national office. (A national network of contributors is also partly responsible for Ed Flanagan's reliance on large contributions).

Many of the candidates for other offices – including many of those who won – received a smaller portion of their funds in amounts in excess of the 1997 limits. Only 14.3% of Deb Markowitz's funds in her successful campaign against incumbent Secretary of State James Milne came in amounts over the limits. A little over 20% of the funds raised by Doug Racine in his close contest with the well-known Barbara Snelling were from amounts above the limits. (It is **[*16]** important to note again that family contributions were not excluded from these data, consequently the numbers are a bit inflated.)

In reviewing these numbers, one must keep in mind that the incentives under the old law were such as to encourage large contributions. Since it simply made sense to raise the largest contributions possible under the old law, the best way to judge the impact of the new limits is to ask the question, Can a candidate successfully win office while raising revenue in exclusively small contributions? The case of Deb Markowitz clearly demonstrated that it is possible to run an effective campaign raising money in mostly small amounts. Only 3.1% of her contributions exceeded the new $400 limit. $7,500 of her revenue, or 14.3% of her total revenue, was from amounts over the limit (it would take a mere 19 contributions at the $400 limit to replace that amount). And, without any previous electoral experience she unseated an incumbent candidate in a close race. Clearly, she was able to communicate her message to Vermont voter while following campaign finance practices not far from what the 1997 Act specifies. Because she defeated an incumbent in a race for an office that does not garner much attention from the media or the voters, her case represents the best example of how a candidate can win while raising money in small amounts. It should also be noted that Barbara Snelling won the close open-seat race for lieutenant governor in 1994 with less than 15% of her funds coming

from money in excess of the contribution limit.

B. Effect of Contribution Limits on State Legislative Candidates' Finances

Tables 6 through 9 present a number of ways of assessing the possible impact of the 1997 contribution limits on state house and senate candidates. No matter how one [*17] looks at these data, it is clear that the $300 contribution limit for senate candidates and the $200 contribution for house candidates will not have any noticeable effect on the ability of legislative candidates to raise funds for their elections and communicate with voters.

The effect of the limits on senate and house candidates' revenues would be minimal. Tables 6 and 7 show the candidate total expenditures and revenues, the sum of the amounts raised over the limit, the percentage of revenues candidates would lose due to the limits, and the average amount of revenues lost to the limits, and the average amount lost per contribution in excess of the limits. The percentage of revenue affected by the limits for senate candidates would have been 10.1% in 1994, 10.8% in 1996, and 18.2% in 1998. The average amounts lost were $577 for 1994, $677 for 1996, and $1,650 for 1998. The percentage of revenue affected by the limits for house candidates was 3.2% in 1994, 5.2% in 1996, and 6.5% in 1998. The average amount affected: $32 in 1994, $42 in 1996, and $115 in 1998. These numbers suggest that the 1997 Act's limits would affect a small and replaceable part of senate and house candidates' revenues.

[Tables 6 and 7 About Here]

There appears to be no systematic difference between incumbents and nonincumbents with regard to the impact of the new contribution limits. In senate contests, challengers relied on more contributions over the limit

than incumbents in 1998 (20.7% of nonincumbents' revenues would have been affected by the limits, 15.5% of incumbents), but in 1996 and 1994 the differences were minimal (a difference of 0.1% in 1996 and 0.4% in 1994). In house races incumbents relied more on large contributions in 1998 and 1996 (with 8% of their revenues over the limit compared to 5.5% of **[*18]** nonincumbents in 1998, and 6.3% compared to 2.9% in 1996) while nonincumbents relied more on large contributions in 1994 (1.5% for incumbents compared to 4.8% for nonincumbents).

Given the pattern of the past three elections, the contribution limits appear to be likely to affect more of the revenues of Democrats and Progressives than Republicans. In two of the three election cycles for senate races and all three of the election cycles for the house, Democrats relied on more money that exceeded the new limits than Republicans. In 1998, for example, 25.5% of Democratic senate candidates' revenues were in amounts in excess of the limit whereas 12.3% of Republican senate candidates' revenues were. In house contests in 1998 8.3% of Democratic candidates' revenues, 5.5% of Republican candidates' revenues, and 10.5% of Progressive candidates' revenues came from amounts in excess of the contribution limits.

Tables 8 and 9 show the number and percent of candidates with the number of the contributions that would have been affected under the new limits in the past three election cycles. Thirty senate candidates (or 39.5% of senate candidates) in the 1998 election cycle had no contributions that exceeded the new $300. Over ½ of senate candidates (52.6%) had 2 or fewer contributions that would have exceeded the new contribution limits. For house candidates, 203 (or 73.6%) of the house candidates in 1998 had no contributions that exceeded the new $200 limit. 85.9% of house candidates received at most 1

contribution over the $200 amount. These patterns show that it is unlikely that many candidates will have a significant number of contributions that will be affected by the new contribution limits.

[Tables 8 and 9 About Here] **[*19]**

However one looks at the patterns of fundraising for house and senate candidates in the past three election cycles, it is evident that the impact of the 1997 Act on these candidates' ability to raise sufficient funds for their campaigns will be minimal. The data from the previous elections show that the money that would be lost under the contribution limits of the 1997 Act constitutes a small enough portion of house and senate candidates' funds that replacing the revenue from these large contributions should not pose a difficulty for candidates.

C. Effect of Contribution Limits on Contributors

In Tables 10 and 11 I examine the impact of the contribution limits on a number of different classifications of contributors to statewide and legislative campaigns over the past three election cycles. Because no information is available regarding unitemized contributions, the analysis in the table is of itemized contributions only; consequently, the numbers will be higher than what they would be if it were possible to include all contributors. "Individual" contributors are all contributors identified by a personal name, regardless of affiliation. "Business" contributors are individual businesses. "Political committee" contributors include all political action committees, associations, and labor unions. "Party organization" contributors are contributions from national, state, and local party organizations.

[Tables 10 and 11 About Here]

The results that stand out most from both tables are

the small number and percentage of contributions from individual citizens that exceed the limit. Among contributions to statewide candidates, only 7.9%, 14.8%, and 12.5% of individual contributions in 1998, 1996, and 1994 exceeded the $400 limit. The average amount **[*20]** over the limit during those elections was $43, $87, and $62. The relatively higher percentage of revenues over the limit in combination with the numbers just mentioned is indicative of a few individual contributors giving large amounts. The number of contributions in excess of the limits that went to legislative candidates is smaller in each year than the number going to statewide candidates, though these contributions constitute a slightly higher percentage of all contributions made – 18.9%, 23.8%, and 18.3% in 1998, 1996, and 1994, respectively. Clearly, the patterns in the previous election cycles show that new limits will not impose a burden on the ability of most citizens to contribute to campaigns.

D. Burlington Mayoral Race

While the analysis of the effect of the limits on statewide and legislative candidates depends on applying the contribution limits to past elections under the old $1,000 limits, at least one major race has occurred since the contribution limits took effect, i.e. the Burlington mayoral race. Under the 1997 Act, candidates for local offices are faced with the same contribution limits as candidates for the state house. A comparison of the amounts raised by mayoral candidates in the largest city in the state between 1997 (before the new limits took place) and 1999 (when the $200 limit on contributions applied) suggests that the limits will not be detrimental to candidates' ability to raise sufficient money to communicate with voters. In 1997 the total amount raised by candidates for mayor was $10,823, in 1999 the total

raised was five times that amount, or $58,025.[15]

E. Missouri Limits versus Vermont Limits [*21]

In *Missouri v. Shrink Missouri Government PAC* (2000) the U.S. Supreme Court recently upheld contribution limits in Missouri that ranged from $1,075 per election for statewide candidates to $275 per election for state house candidates. In Table 12 I compare the recently upheld Missouri limits with the Vermont limits by looking at the two states' contribution limits in light of the size of the constituency (since Missouri's limits are per election, I've doubled the size of the contribution limit to make them comparable to Vermont's election-cycle limits). The size of the constituency gives us an indication of the amount of voters that a candidate would have to reach during his or her election campaign. The ratio of contribution to constituency size gives us an idea of the size of possible contribution vis-a-vis the size of the campaign necessary to reach enough voters. It is clear from looking at the ratio of the limit to the size of the constituency that Vermont's limits are more generous than Missouri's. For statewide races, the ratio of the contribution limit to the size of the constituency for Missouri is .00040 compared to the .00068 ratio for Vermont. For state house districts, the ratios are .01673 for Missouri, .02564 for 2 member districts in Vermont. The ratios for the senate show that the contribution limits are more generous for senate candidates in single member districts, roughly equal for senate candidates in 3 member districts, and slightly less generous when compared to the Chittenden County 6-member senate district. Thus, relative to the size of the constituency – and thus size of the campaign that is necessary – Ver-

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[15]Totals taken from candidate's report filed with the Burlington City Clerk.

mont contribution limits (with the exception of the limit on Chittenden County senate candidates) are as generous or more generous than the Missouri limits recently upheld by the U.S. Supreme Court.

[Table 12 About Here] **[*22]**

F. Effect of Out of State Limit

The 1997 Act placed an aggregate cap on out-of-state contributions – contributions from outside of Vermont cannot exceed 25% of candidates' total revenues. In Tables 13 through 15 I present the proportion of statewide candidates' revenues coming from out of state.

[Tables 13 through 15 About Here]

The statewide candidates provide a wide variety of funding mixes, ranging from no money from out of state to 68.6% of revenues originating from beyond Vermont's borders. Two candidates – Howard Dean and Edward Flanagan – were consistently at the high end of the scale. Governor Dean raised 60.8, 52, and 42.3 percent of his money out of state in 1994, 1996, and 1998, respectively. Edward Flanagan's out of state percentages were 68.6, 44.7, and 66.3. Dean and Flanagan have extensive networks outside of the state that account for these numbers and appear to be unique in this regard. Most of the other statewide candidates' out-of-state revenues do not add up to the 25% limit and all but one of the minor party candidates from 1994 to 1998 received no money from out of state (one candidate received $28 from Nebraska). Additionally, plenty of victorious candidates have won while relying on only a small amount of out-of-state money. Only 19.5% of Ruth Dwyer's funds in 1998 came from out of state, 8.1% of Doug Racine's, and 16.8% of Dwinnell's. At 27.9%, Deb Markowitz's 1998 campaign raised just over the 25% mark out of state. As with the contribution limits, the question is whether there are successful candidates whose pattern of financing fits the

limits of the new law. It is evident from the past experience of statewide candidates as outlined in the three tables that many successful candidates did not need to raise much of their money **[*23]** from outside of Vermont. For example, in three election cycles of competitive races, no candidate for lieutenant governor would have exceeded the out of state limit: the average percentage raised from out of state in these three competitive races was 9.05%.

The impact of the 25% out-of-state limit on house and senate candidates will be minimal if they continue the fund raising practices of the past. This is evident in the average out-of-state contributions and the average percentage of revenues coming from out of state for house and senate candidate from 1994 to 1998. The average percentage of revenues from out of state for senate candidates in 1994 was 7.5%; it was 9% in 1996. It dropped to .9% in 1998.[16] The average percentage for house candidates was 1.7% in 1994, 2.6% in 1996, and 2.2% in 1998. In 1994 93.7% of senate candidates and 96% of house candidates raised less than 25% of their revenues from outside of Vermont. In 1996 it was 87.9% of senate candidates and 97.9% of house candidates. It is quite apparent that the out-of-state limit does not pose a burden on state legislative candidates.

[Table 16 About Here]

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[16]The 1998 "average % out of state" was calculated differently from the average for 1994 and 1996 due to data limitations. The 1998 average % is actually the % of total revenue raised from out of state sources for all candidates (not the average of the percentage for each candidate). Both methods result in similar numbers for 1994 and 1996. The 0.9% for 1998 senate candidates does represent a real drop in identifiable out of state contributions.

V. Expenditure Limits: Data Analysis

In the 1997 campaign finance Act the legislature set expenditure limits for statewide and legislative campaigns. To reflect the well-documented electoral advantage that incumbents accrue from their office, the amount incumbents are allowed to spend under the Act was set at 85% of the spending limit (90% for state house and senate incumbents). So, gubernatorial candidates can spend up to $300,000 during the election **[*24]** cycle, but incumbent governors can only spend $255,000. The limits for each office and the spending by statewide candidates are listed in Tables 17 through 19.[17]

For the three election cycles covered, 17 out of the 29 major party candidates for statewide office spent less than what the spending limits in the 1997 Act would allow. All of the third party candidates failed to spend anywhere near the level of the spending limits. Neither of the major party gubernatorial candidates spent in excess of the limits in 1994 and 1996. In the 1998 contest, Governor Dean exceeded the limit by $180,273 while his Republican opponent could have spent an additional $47,488 before reaching the expenditure limit. The major party candidates in the lieutenant governor races in all three election cycles, however, did exceed the limit.

[Tables 17 to 19 About Here]

The question, once again, is not how many candidates spent more or less than the limit, it is whether a candidate can mount a successful campaign by keeping their spending below the limits imposed by the new law. There are a number of cases that demonstrate that it is possible. Jim Milne unseated incumbent Secretary of State Don Hooper in 1994 while spending $26,733, an amount

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[17]Spending include in-kind contributions given to the candidate but excludes contributions candidates made to other candidates or committees and repayment of loans to the candidate themselves.

that was $18,276 below the new expenditure limits (and about $13,000 less than Hooper spent, see Table 19). Milne was later unseated by Deb Markowitz, who exceeded the limit only because of in-kind contributions (the actual spending of her campaign organization was less than the limit). Ruth Dwyer mounted a serious challenge to incumbent governor Dean in 1998 while **[*25]** spending almost $50,000 less than the new limits will allow. It appears that successful campaigns – of both incumbents and nonincumbents, Democrats and Republicans – are possible when the candidates' spending conforms to the expenditure limits enacted in the 1997 law.

With regard to legislative candidates, most candidates have typically spent less than the new limits. In tables 20 and 21 I present the total and average spending for senate and house candidates with separate data for candidates in different categories. The limits for the house and senate are sensitive to the size of the district in order to allow for the greater number of voters that must be reached. The legislature set the limit for house candidates in single member districts at $2,000 and for two-member districts at $3,000. The limits on senate candidates were set at $4,000 plus an extra $2,500 for every additional seat in the district. And, like statewide races, incumbents are allowed to spend less than those limits (90% of the limit in legislative races) in order to compensate for the advantages incumbents accrue from their position. Because the limitations on senate races are much more sensitive to the size of the district than the limits on house races, I compare average spending to the limits only by the number of seats in the district for senate. For house candidates, I select a number of lower limits to compare with the averages.

[Tables 20 and 21 About Here]

The spending patterns of senate candidates from 1994 to 1998 show that the spending limits will not be a significant constraint on senate campaigns. The average spending by major party candidates in all but the single member districts is below the spending limits for those districts. Senate candidates in 3 member senate districts in **[*26]** 1998, for example, spent on average $8,122, that is $878 below the spending limits set by the legislature in the 1997 Act. For the single member senate districts, the average candidate expenditure in 1994 was $229 over the limit. the amounts were higher in 1996 and 1998, but given the 1994 spending, one could believe successful campaigns in single member districts could be waged while adhering to the spending limits.

The average spending by different types of candidates is included in table 20 to determine whether the limits are more or less likely to affect a certain class of candidate. Incumbents spent more money in each of the three election cycles (reflecting the incumbency advantage in fundraising), though the difference is minimal in 1996. The average Republican senatorial candidate spent slightly more than the average Democrat in 1998, less in 1996, and significantly more in 1994. This lack of a clear pattern suggests the law will not benefit one party's candidates over another in senate races.

House candidates are even less likely to feel constrained by the expenditure limits given their pattern of spending in the previous three elections. In 1998, all categories of candidates for the house spent less than the spending limit. Incumbents spent, on average, $623 less than the strictest limit that could apply to them. Nonincumbents spent $493 less. Candidates in single member districts spent $474 less than the limit for their type of district, candidates in 2 seat districts spent on average $1,799 less than the spending limit. In 1996 only Progressive party candidates spent, on average, more

than the expenditure limit. In 1994 the average Republican and Progressive candidate spent more than the limit, and the average candidate in single member districts spent $10 more than the limit. **[*27]**

As with the senate candidates, the average for the different categories of house candidates suggests that no one group of candidates will suffer more under the new law – there are no consistent patterns of one group of candidates spending more than any other.

In sum, the pattern of spending in the past three elections clearly shows that the expenditure limits in the new law will have a minor effect on state house and senate candidates since most candidates typically have not spent more than what the new law will allow.

VI. Conclusion

The analysis of campaign finance activity in the 1994, 1996, and 1998 suggests that the new regulations established in 1997 under the title "An Act Relating to Public Financing of Election Campaigns, Disclosure Requirements and Limits on Campaign Contributions and Expenditures" are workable for candidates and committees in state elections. The contribution limits are proportionate to the levels of spending that have been typical in the state: the limits do not make it difficult to raise the requisite cash for any of the state's campaigns. While some candidates have relied on larger contributions – which only make sense when such contributions are allowed – there have been many cases where candidates who relied mostly on small contributors have succeeded in winning office; their ability to communicate effectively with voters was not apparently hampered. Also, the patterns of giving over the past three elections suggest that the contribution limits will not affect the ability of most individual citizens to contribute to campaigns. The limit on out-of-state contributions will curtail candidates

who have come to rely on national networks of supporters, but it is evident that one can run a successful campaign fueled by mostly Vermont money. And, finally, while the [*28] expenditure limits would curtail some of the spending seen in recent years, most candidates, especially in house and senate races, have mounted successful campaigns spending well beneath the limits set by the law.

Figure 1: Summary of Vermont's Post 1997 Campaign Finance Law

Contribution Limits		
	Individuals and political committees	Political Party Committees
Governor	$400	$400
Lt gov	$400	$400
Secretary of State	$400	$400
State Treasurer	$400	$400
Auditor of Accounts	$400	$400
Attorney General	$400	$400
State Senate	$300	$300
State House	$200	$200
Political Party Committees	$2,000	$2,000
Political Committees	$2,000	$2,000
No more than 25% of candidate's money can come from out of state, including national political parties		

Expenditure Limits (2 year election cycle)		
	Challengers and open seat	Incumbents (85% of limit for other candidates)
Governor	$300,000	$255,000
Lt gov	$100,000	$85,000
Secretary of State	$45,000	$38,250
State Treasurer	$45,000	$38,250
Auditor of Accounts	$45,000	$38,250
Attorney General	$45,000	$38,250
State Senate	$4,000 + $2,500 for each seat	$3,600 + $2,250 for each seat (90% of challenger spending)
State House	$2,000 ($3,000 if 2-member dist)	$1,800 ($2,700 if 2-member dist) (90% of challenger spending)

Public Funding			
	Qualifying	Grant amount	
		Primary	General
Governor	At least $35,000 from at least 1,500 people in contributions of $50 or less	$75,000	$225,000
Lieutenant Governor	$17,500/750 people/$50 or less	$25,000	$75,000
Incumbents receive 85% of the grant total			

Table 1

Average Campaign Expenditures for Major Party Candidates

	1994		1996		1998	
	winner(s)	loser(s)	winner(s)	loser(s)	winner(s)	loser(s)
Governor	$183,300	$36,268	$191,203	$46,244	$435,273	$252,512
Lt. Governor	$115,719	$106,735	$138,418	$171,690	$114,538	$117,486
Other State-wide	$14,592	$25,719	$18,175	$26,886	$25,052	$39,773
Senate Races	$7,713	$4,121	$7,873	$6,278	$11,999	$5,556
House Races	$1,008	$1,594	$1,094	$1,068	$1,648	$1,453

Note: Figures are for major party candidates in the general election. For the purposes of this table, candidates who did not file a report were assigned an expenditure value of $500 (candidates are required to file a report if expenditures or revenues reach $500).

Effect of Contribution Limits on Individual and Committee Contributions to 1998 Statewide Candidates

	vote %	# of nonparty Contributions over limit	% over limit	amount raised over limit	amount over as % of total revenue	Total Revenue raised*
Governor						
Dean (D)	55.7%	145	7.8%	$113,259	33.1%	$342,403
Dwyer (R)	41.1%	126	13.4%	$64,613	25.6%	$252,511
Rome (R)		57	4.3%	$27,875	12.9%	$216,289
Berkey (Lib)	0.9%	0	0%	$0	0%	$145
Gottlieb (Lib Union)	0.5%	0	0%	$0	0%	$0
Williams (VG)	1.5%	0	0%	$0	0%	$0
Lt. Governor						
Racine (D)	48.6%	28	8.8%	$24,921	21.5%	$115,838
Snelling (R)	48.1%	87	11.7%	$29,525	25.3%	$116,879
Faeterri (Lib)	0.6%	0	0%	$0	0%	$0
Newton (Lib Union)	0.7%	0	0%	$0	0%	$0
Coleman (VG)	1.8%	0	0%	$0	0%	$0
Secretary of State						
Markowitz (D)	47.8%	23	3.1%	$7,500	14.3%	$52,300
Milne (R)	45.2%	4	3.7%	$3,144	17.8%	$17,623
Richmond (Lib)	2.9%	0	0%	$0	0%	$100
Lane (VG)	3.9%	0	0%	$0	0%	$195
Treasurer						
Douglas (R/D)	85.4%	0	0.0%	$0	0	$9,948
Baker (Lib)	3.6%	0	0%	$0	0%	$0
Linskey (Lib Union)	4.7%	0	0%	$0	0%	$0
Bushey (VG)	6.0%	0	0%	$0	0%	$0
Auditor of Accounts						
Flanagan (D)	52.2%	30	7.8%	$20,855	35.4%	$58,831
Dwinnell (R)	38.9%	15	9.6%	$8,408	22.4%	$37,505
Baker (Lib)	2.8%	0	0%	$0	0%	$142
Jackowski (Lib Union)	2.9%	0	0%	$0	0%	$0
Saetta (VG)	3.0%	0	0%	$0	0%	$0
Attorney General						
Sorrell (D)	83.8%	1	0.0%	$373	1.7%	$21,484
Costanzo (Lib)	4.5%	0	0%	$0	0%	$1,231
Fisher (Lib Union)	2.5%	0	0%	$0	0%	$0
Ward (VG)	8.8%	0	0%	$0	0%	$0

* "Total revenues raised" is the total revenue raised during the election cycle, it does not include balances carried forward from previous campaigns.

Note: Tables 3 through 5 include all nonparty contributions other than contribution a candidate makes to their own campaigns. Party contributions are not included in this analysis because party contributions were not limited at all in these elections and consequently the inclusion of party contributions would greatly skew the results for a few candidates. Dean and Dwyer, for example, would have had 50% and 41% of their revenues, respectively, over the limit if party contributions were included. On the other hand, the secretary of state candidates, Markowitz and Milne, would have had 16.8% and 19% of their revenues from amounts over the limit (minor changes from the numbers in the table).

Table 4

Effect of Contribution Limits on Individual and Committee Contributions to 1996 Statewide Candidates

	vote %	# of nonparty contributions over limit	% over limit	amount raised over limit	amount over as % of total revenue	Total Revenue Raised
Governor						
Dean (D)	70.5%	192	10.6%	$188,192	47.6%	$395,424
Gropper (R)	22.4%	17	12.2%	$6,500	14.2%	$45,698
Randall (Lib)	1.1%	2	14.2%	$150	1.5%	$10,284
Herbert (Lib Union)	1.6%	0	0%	$0	0%	$93
Lane (VG)	1.4%	0	0%	$0	0%	$480
St. John (I)	1.2%	1	25%	$100	12.9%	$775
Brunelle (Nat Law)	1.3%	0	0%	$0	0%	$0
Lt. Governor						
Racine (D)	54.0%	28	3.7%	$19,147	17.7%	$108,274
Carroll (R)	41.0%	108	15.6%	$49,050	27.9%	$176,052
Ngoima (Lib Union)	1.0%	0	0%	$0	0%	$0
Coleman (VG)	2.1%	0	0%	$0	0%	$206
Bate (Nat Law)	1.6%	0	0%	$0	0%	$0
Secretary of State						
Milne (R/D)	81.4%	1	0.1%	$800	26.4%	$3,035
Costanzo (L)	3.1%	0	0%	$0	0%	$310
Levy (Lib Union)	3.3%	0	0%	$0	0%	$0
De Pierro (VG)	7.4%	0	0%	$0	0%	$13
Wilder (Nat Law)	4.5%	0	0%	$0	0%	$0
Treasurer						
Douglas (R/D)	85.8%	0	0.0%	$0	0.0%	$8,583
Gottlieb (Lib Union)	3.5%	0	0%	$0	0%	$0
Bushey (VG)	7.0%	0	0%	$0	0%	$0
Bate (Nat Law)	3.4%	0	0%	$0	0%	$0
Auditor of Accounts						
Flanagan (D)	49.6%	39	12.6%	$19,255	24.3%	$79,352
Morrissey (R)	39.1%	13	9.2%	$100	0.3%	$30,025
Baker (L)	2.3%	0	0%	$0	0%	$0
Davenport (Lib Union)	2.5%	0	0%	$0	0%	$0
Sweet (VG)	4.6%	0	0%	$0	0%	$0
McLaud (Nat Law)	1.5%	0	0%	$0	0%	$0
Attorney General						
Amestoy (R/D)	87.2%	4	9.3%	$3,400	37.3%	$9,110
Diamondstone (Lib U)	3.5%	0	0%	$0	0%	$0
Kingston (VG)	6.0%	0	0%	$0	0%	$0
Huston (Nat Law)	3.0%	0	0%	$0	0%	$0

Table 5

Effect of Contribution Limits on Individual and Committee Contributions to 1994 Statewide Candidates

	vote %	# of nonparty contributions over limit	% over limit	amount raised over limit	amount over as % of total revenue	Total Revenue Raised
Governor						
Dean (D)	68.6%	218	12.0%	$174,501	47.4%	$368,117
Kelly (R)	19.0%	15	25.4%	$6,850	17.8%	$38,426
Gottlieb (Lib Union)	0.8%	0	0%	$0	0%	$0
Lane (VG)	1.0%	0	0%	$0	0%	$200
Brunelle (Nat Law)	0.7%	0	0%	$0	0%	$0
Jaccaci (People VT)	0.9%	0	0%	$0	0%	$0
Brueckner (I)	0.9%	0	0%	$0	0%	$0
Morse (I)	7.0%	0	0%	$0	0%	$1,339
Lt. Governor						
Snelling (R)	50.2%	72	7.9%	$21,950	14.7%	$149,813
Racine (D)	46.8%	21	4.0%	$14,835	16.8%	$88,185
Haas (Lib Union)	1.3%	0	0%	$0	0%	$0
Bate (Nat Law)	1.4%	0	0%	$0	0%	$0
Secretary of State						
Milne (R)	50.0%	2	1.6%	$581	3.1%	$18,946
Hooper (D)	42.1%	28	40.6%	$9,550	32.0%	$29,875
Herbert (Lib Union)	4.6%	0	0%	$0	0%	$0
Padilla (Nat Law)	3.0%	0	0%	$0	0%	$0
Treasurer						
Douglas (R/D)	91.4%	1	1.3%	$100	1.2%	$8,436
Ngoima (Lib Union)	3.6%	0	0%	$0	0%	$0
Schumacher (Nat Law)	4.8%	0	0%	$0	0%	$0
Auditor of Accounts						
Flanagan (D)	52.0%	13	43.3%	$5,775	39.1%	$14,770
Thorn (R)	38.5%	1	3.4%	$700	5.8%	$11,968
Davenport (Lib Union)	3.9%	0	0%	$0	0%	$0
McLaud (Nat Law)	1.7%	0	0%	$0	0%	$0
Redden (VG)	3.6%	0	0%	$0	0%	$0
Attorney General						
Amestoy (R/D)	87.1%	2	7.1%	$700	15.4%	$4,550
Diamondstone (Lib U)	5.5%	0	0%	$0	0%	$0
Mulchay (Nat Law)	3.7%	0	0%	$0	0%	$0
Talcott (VG)	3.4%	0	0%	$0	0%	$0

Table 2

Contributions Over Limit Received

	1994		1996		1998	
	all	nonparty	all	nonparty	all	nonparty
statewide candidates						
no. contributions over limit	378	371	420	413	519	505
% of contributions over limit	9.5%	9.3%	9.9%	9.8%	7.8%	7.6%
senate candidates						
no. contributions over limit	163	129	160	134	327	258
% of contributions over limit	6.0%	4.8%	4.7%	4.0%	17.2%	14.2%
house candidates						
no. contributions over limit	90	53	115	78	269	136
% of contributions over limit	3.5%	2.1%	5.4%	3.9%	11.9%	6.5%
party organizations						
no. contributions over limit	70	60	10	6	73	51
% of contributions over limit	0.1%	0.1%	0.1%	0.1%	2.4%	1.7%
political committees						
no. contributions over limit	2	2	3	3	6	5
% of contributions over limit	0.4%	0.4%	1.9%	1.9%	0.6%	0.5%

* 1994 party numbers excludes contributions made to the Democratic Governors' Association (DGA). It was excluded because while the DGA only contributed to 3 candidates in Vermont, the report filed by the DGA was its report for the entire nation; thus all but a few contributions listed in their report were from outside of Vermont.

Explanation: This table contains the number and percent of contributions that would have been over the new contribution limits. To calculate the percent of contributions over the limits, the number of contributions over the limit were divided by the total number of itemized contributions plus an estimate of the unitemized contributions. Unitemized contributions were estimated by taking subtracting the total of itemized contributions from the candidates' total revenues and then dividing that total by 100 (the level at which contributions must be itemized). This method of estimating unitemized contributions is a conservative one and undoubtedly underestimates the number of unitemized contributions.

Table 3A

Effect of Contribution Limits on All Contributions to 1998 Statewide Candidates

	vote %	# of contributions over limit	% over limit	amount raised over limit	amount over as % of total revenue	total revenue
Governor						
Dean	55.7%	146	7.8%	$170,721	49.9%	$342,403
Dwyer	41.1%	127	13.4%	$103,013	40.8%	$252,511
Rome		57	4.3%	$27,875	12.9%	$216,289
Lt. Governor						
Racine	48.6%	29	8.8%	$58,883	50.8%	$115,838
Snelling	48.1%	87	11.7%	$43,126	36.9%	$116,879
Secretary of State						
Markowitz	47.8%	24	3.1%	$7,947	15.2%	$52,300
Milne	45.2%	5	3.7%	$3,344	19.0%	$17,623
Treasurer						
Douglas	85.4%	0	0.0%	$0	0	$9,948
Auditor of Accounts						
Flanagan	52.2%	30	7.8%	$20,855	35.4%	$58,831
Dwinnell	38.9%	16	9.6%	$13,008	34.7%	$37,505
Attorney General						
Sorrell	83.8%	1	0.0%	$373	1.7%	$21,484

Table 4A

Effect of Contribution Limits on All Contributions to 1996 Statewide Candidates

	vote %	# of contributions over limit	% over limit	amount raised over limit	amount over as % of total revenue	total revenue
Governor						
Dean	70.5%	193	10.6%	$197,717	50.0%	$395,424
Gropper	22.4%	18	12.9%	$25,700	56.2%	$45,698
Lt. Governor						
Racine	54.0%	29	3.8%	$19,247	17.8%	$108,274
Carroll	41.0%	109	15.7%	$56,175	31.9%	$176,052
Secretary of State						
Milne	81.4%	1	0.1%	$800	26.4%	$3,035
Treasurer						
Douglas	85.8%	0	0.0%	$0	0.0%	$8,583
Auditor of Accounts						
Flanagan	49.6%	40	12.9%	$23,855	30.1%	$79,352
Morressey	39.1%	14	9.9%	$3,450	11.5%	$30,025
Attorney General						
Amestoy	87.2%	4	9.3%	$3,400	37.3%	$9,110

Table 5A

Effect of Contribution Limits on All Contributions to 1994 Statewide Candidates

	vote %	# of contributions over limit	% over limit	amount raised over limit	amount over as % of total revenue	total revenue
Governor						
Dean	68.6%	218	12.0%	$174,501	47.4%	$368,117
Kelly	19.0%	16	27.1%	$7,450	19.4%	$38,426
Lt. Governor						
Snelling	50.2%	72	7.9%	$21,950	14.7%	$149,813
Racine	46.8%	22	4.2%	$24,935	28.3%	$88,185
Secretary of State						
Milne	50.0%	2	1.6%	$581	3.1%	$18,946
Hooper	42.1%	29	42.0%	$9,550	32.0%	$29,875
Treasurer						
Douglas	91.4%	1	1.3%	$100	1.2%	$8,436
Auditor of Accounts						
Flanagan	52.0%	13	43.3%	$5,775	39.1%	$14,770
Thorn	38.5%	2	3.4%	$1,800	15.0%	$11,968
Attorney General						
Amestoy	87.1%	2	7.1%	$700	15.4%	$4,550

Table 6

Effect of Individual and Political Committee Contribution Limits on State Senate Candidates' Revenues

	Total spent on campaigns	Average spent	Total raised	Average raised	Total over limit	% lost to limits	Average revenue lost	Average lost per contribution
1998								
All candidates	$551,328	$7,450	$680,958	$9,202	$123,770	18.2%	$1,650	$107
Incumbents	$249,740	$8,919	$337,215	$12,043	$52,400	15.5%	$1,871	$130
Nonincumbents	$302,711	$6,441	$345,018	$7,341	$71,370	20.7%	$1,519	$95
Democrats	$229,523	$8,828	$266,485	$10,249	$68,066	25.5%	$2,618	$128
Republicans	$310,575	$9,705	$403,478	$12,609	$49,454	12.3%	$1,545	$88
1996								
All candidates	$492,064	$7,689	$496,076	$7,874	$53,478	10.8%	$677	$110
Incumbents	$144,802	$7,621	$153,015	$8,501	$17,474	11.4%	$874	$109
Nonincumbents	$324,600	$7,549	$315,758	$7,343	$35,704	11.3%	$626	$110
Democrats	$243,935	$8,131	$229,085	$7,636	$31,332	13.7%	$982	$142
Republicans	$222,359	$7,941	$236,473	$8,758	$21,344	9.0%	$689	$85
1994								
All candidates	$392,170	$5,853	$417,478	$6,844	$42,134	10.1%	$577	$63
Incumbents	$173,682	$8,271	$205,058	$10,793	$20,251	9.9%	$844	$81
Nonincumbents	$218,488	$4,750	$212,419	$5,058	$21,883	10.3%	$447	$52
Democrats	$150,337	$5,184	$145,895	$5,211	$16,806	11.5%	$542	$67
Republicans	$229,022	$8,179	$258,752	$9,952	$23,078	8.9%	$744	$59

Table 7A

Effect of Contribution Limits on All Contributions to State House Candidates

	Total spent on campaigns	Average spent	Total raised	Average raised	Total over limit	% lost to limits	Average revenue lost
1998							
All candidates	$369,110	$1,352	$466,023	$1,707	$105,730	22.7%	$402
Incumbents	$150,618	$1,177	$182,503	$1,426	$36,026	19.7%	$281
Nonincumbents	$218,492	$1,507	$283,520	$1,955	$69,704	24.6%	$516
Democrats	$143,897	$1,151	$168,681	$1,349	$28,659	17.0%	$245
Republicans	$203,960	$1,619	$272,336	$2,161	$72,638	26.7%	$576
Progressives	$7,960	$1,592	$11,478	$2,296	$1,200	10.5%	$150
Independents	$3,664	$733	$3,773	$755	$0	0	$0
1996							
All candidates	$236,855	$1,528	$245,825	$1,596	$30,337	12.3%	$100
Incumbents	$85,591	$1,451	$88,851	$1,506	$9,752	11.0%	$86
Nonincumbents	$239,141	$1,533	$248,620	$1,604	$20,585	8.3%	$108
Democrats	$126,731	$1,584	$125,557	$1,610	$17,010	13.5%	$122
Republicans	$103,156	$1,453	$112,618	$1,564	$12,352	11.0%	$87
Progressives	$6,903	$2,301	$8,245	$2,748	$350	4.2%	$39
Independents	$2,351	$1,176	$2,200	$1,100	$625	28.4%	$39
1994							
All candidates	$322,812	$1,448	$287,183	$1,282	$32,276	11.2%	$112
Incumbents	$67,423	$887	$140,023	$1,842	$7,021	5.0%	$64
Nonincumbents	$255,389	$1,737	$147,161	$994	$25,255	17.2%	$143
Democrats	$95,080	$980	$103,279	$1,054	$19,535	18.9%	$144
Republicans	$210,677	$2,150	$100,233	$1,023	$12,592	12.6%	$104
Progressives	$6,858	$2,286	$7,413	$2,471	$150	2.0%	$15
Independents	$6,832	$569	$7,667	$639	$0	0.0%	$0

Table 6A

Effect of Contribution Limits on All Contributions to State Senate Candidates

	Total spent on campaigns	Average spent	Total raised	Average raised	Total over limit	% lost to limits	Average revenue lost
1998							
All candidates	$551,328	$7,450	$680,958	$9,202	$192,287	28.2%	$2,564
Incumbents	$249,740	$8,919	$337,215	$12,043	$68,167	20.2%	$2,435
Nonincumbents	$302,711	$6,441	$345,018	$7,341	$124,120	36.0%	$2,641
Democrats	$229,523	$8,828	$266,485	$10,249	$75,266	28.2%	$2,895
Republicans	$310,575	$9,705	$403,478	$12,609	$106,571	26.4%	$3,330
1996							
All candidates	$492,064	$7,689	$496,076	$7,874	$74,222	15.0%	$940
Incumbents	$144,802	$7,621	$153,015	$8,501	$21,182	13.8%	$1,059
Nonincumbents	$324,600	$7,549	$315,758	$7,343	$52,740	16.7%	$925
Democrats	$243,935	$8,131	$229,085	$7,636	$38,268	16.7%	$1,196
Republicans	$222,359	$7,941	$236,473	$8,758	$35,152	14.9%	$1,134
1994							
All candidates	$392,170	$5,853	$417,478	$6,844	$74,235	17.8%	$1,017
Incumbents	$173,682	$8,271	$205,058	$10,793	$30,168	14.7%	$1,257
Nonincumbents	$218,488	$4,750	$212,419	$5,058	$44,067	20.7%	$899
Democrats	$150,337	$5,184	$145,895	$5,211	$21,336	14.6%	$688
Republicans	$229,022	$8,179	$258,752	$9,952	$50,649	19.6%	$1,634

Table 7

Effect of Individual and Political Committee Contribution Limits on State House Candidates' Revenues

	Total spent on campaigns	Average spent	Total raised	Average raised	Total over limit	% lost to limits	average revenue lost	Average lost per contribution
1998								
All candidates	$369,110	$1,352	$466,023	$1,707	$30,290	6.5%	$115	$57
Incumbents	$150,618	$1,177	$182,503	$1,426	$14,562	8.0%	$114	$48
Nonincumbents	$218,492	$1,507	$283,520	$1,955	$15,728	5.5%	$117	$71
Democrats	$143,897	$1,151	$168,681	$1,349	$14,068	8.3%	$113	$58
Republicans	$203,960	$1,619	$272,336	$2,161	$14,927	5.5%	$118	$57
Progressives	$7,960	$1,592	$11,478	$2,296	$1,200	10.5%	$240	$150
Independents	$3,664	$733	$3,773	$755	$0	0	$0	$0
1996								
All candidates	$236,855	$1,528	$245,825	$1,596	$12,792	5.2%	$42	$24
Incumbents	$85,591	$1,451	$88,851	$1,506	$5,581	6.3%	$49	$39
Nonincumbents	$239,141	$1,533	$248,620	$1,604	$7,211	2.9%	$38	$19
Democrats	$126,731	$1,584	$125,557	$1,610	$6,446	5.1%	$45	$26
Republicans	$103,156	$1,453	$112,618	$1,564	$5,371	4.8%	$38	$22
Progressives	$6,903	$2,301	$8,245	$2,748	$350	4.2%	$88	$39
Independents	$2,351	$1,176	$2,200	$1,100	$625	28.4%	$48	$39
1994								
All candidates	$322,812	$1,448	$287,183	$1,282	$9,249	3.2%	$32	$20
Incumbents	$67,423	$887	$140,023	$1,842	$2,143	1.5%	$19	$13
Nonincumbents	$255,389	$1,737	$147,161	$994	$7,106	4.8%	$40	$24
Democrats	$95,080	$980	$103,279	$1,054	$3,718	3.6%	$27	$23
Republicans	$210,677	$2,150	$100,233	$1,023	$5,281	5.3%	$44	$20
Progressives	$6,858	$2,286	$7,413	$2,471	$150	2.0%	$50	$15
Independents	$6,832	$569	$7,667	$639	$0	0.0%	$0	$0

Table 8

Effect of Limits on the Number of Individual and Committee Contributions for Senate Candidates

Number of contributions over the limit	1994		1996		1998	
	# of candidates	Cumulative %	# of candidates	Cumulative %	# of candidates	Cumulative %
0	35	47.3%	37	46.3%	30	39.5%
1	11	62.2%	11	60.0%	7	48.7%
2	7	71.6%	11	73.8%	3	52.6%
3	8	82.4%	3	77.5%	4	57.9%
4-10	12	100.0%	18	100.0%	27	93.4%
11-16					5	100.0%

Table 9

Effect of Limits on the Number of Individual and Committee Contributions for House Candidates

Number of contributions over the limit	1994		1996		1998	
	# of candidates	Cumulative %	# of candidates	Cumulative %	# of candidates	Cumulative %
0	259	89.6%	252	82.6%	203	73.6%
1	19	96.2%	36	94.4%	34	85.9%
2	6	98.3%	10	97.7%	23	94.2%
3	3	99.3%	6	99.7%	9	97.5%
4-12	2	100.0%	1	100.0%	7	100.0%

Note: Tables 8 and 9 includes all nonparty contributions other than contribution a candidate makes to their own campaigns.

Table 10

Contributions by Contributor Type for Statewide Candidates: Itemized Contributions Only

	# over limit	% over limit	Total contributed	amount over limit	% of total over limit	average amt. over limit
1998						
Individuals	370	7.9%	$646,202	$201,373	31.2%	$43
businesses	74	38.9%	$94,786	$50,823	53.6%	$267
political committees	28	70.0%	$49,494	$35,644	72.0%	$891
party organizations	14	63.6%	$150,462	$143,271	95.2%	$6,512
1996						
individuals	275	14.8%	$415,005	$161,557	38.9%	$87
businesses	85	50.0%	$99,130	$52,667	53.1%	$312
political committees	49	80.3%	$106,314	$84,714	79.7%	$1,389
party organizations	7	46.7%	$47,825	$43,025	90.0%	$2,868
1994						
individuals	248	12.5%	$361,917	$122,992	34.0%	$62
businesses	95	55.2%	$119,703	$73,000	61.0%	$424
political committees	24	72.7%	$50,150	$39,300	78.4%	$1,191
party organizations	7	70.0%	$17,582	$13,950	79.3%	$1,395

Table 11

Contributions by Contributor Type for State House and Senate Candidates: Itemized Contributions Only

	# over limit	% over limit	total contributed	amount over limit	% of total over limit	average amt. over limit
1998						
Individuals	223	18.9%	$243,195	$74,770	30.7%	$63
Businesses	90	31.7%	$86,440	$25,500	29.5%	$90
political committees	55	34.6%	$65,698	$33,045	50.3%	$208
party organizations	202	74.3%	$174,922	$114,512	65.5%	$421
1996						
Individuals	135	23.8%	$135,439	$42,928	31.7%	$76
Businesses	21	22.3%	$25,017	$4,950	19.8%	$53
political committees	52	38.8%	$43,469	$14,998	34.5%	$112
party organizations	63	47.4%	$53,962	$26,896	49.8%	$202
1994						
individuals	125	18.3%	$132,813	$33,583	25.3%	$49
businesses	32	23.0%	$33,067	$7,996	24.2%	$58
political committees	22	29.7%	$25,425	$9,200	36.2%	$124
party organizations	71	59.7%	$66,235	$40,771	61.6%	$343

Table 12

Comparison of Missouri's Contribution Limits with Vermont's

	Contribution limit	Size of constituency	Ratio constituency to limit
Missouri statewide	$2,150	5,359,000	0.00040
Vermont statewide	$400	589,000	0.00068
Missouri senate	$1,050	157,600	0.00666
Vermont senate 1 seat	$300	19,600	0.01531
Vermont senate 3 seats	$300	58,800	0.00510
Vermont senate 6 seats	$300	117,800	0.00255
Missouri house	$550	32,877	0.01673
Vermont house 2 seats	$200	7,800	0.02564

Table 17

Campaign Expenditures, Statewide Candidates, 1998

	vote %	total campaign expenditures	expenditure limit	difference with expenditure limit
Governor				
Dean (D)	55.7%	$435,273	$255,000	$180,273
Dwyer (R)	41.1%	$252,512	$300,000	-$47,488
Rome (R)		$216,413	$300,000	-$83,587
Berkey (Lib)	0.9%	$120	$300,000	-$299,880
Gottlieb (Lib Union)	0.5%	$0	$300,000	-$300,000
Williams (VG)	1.5%	$0	$300,000	-$300,000
Lt. Governor				
Racine (D)	48.6%	$114,538	$85,000	$29,538
Snelling (R)	48.1%	$117,611	$100,000	$17,611
Faeterri (Lib)	0.6%	$0	$100,000	-$100,000
Newton (Lib Union)	0.7%	$0	$100,000	-$100,000
Coleman (VG)	1.8%	$0	$100,000	-$100,000
Secretary of State				
Markowitz (D)	47.8%	$58,282	$45,000	$13,282
Milne (R)	45.2%	$15,240	$38,250	-$23,010
Richmond (Lib)	2.9%	$100	$45,000	-$44,900
Lane (VG)	3.9%	$153	$45,000	-$44,847
Treasurer				
Douglas (R/D)	85.4%	$2,521	$38,250	-$35,729
Baker (Lib)	3.6%	$0	$45,000	-$45,000
Linskey (Lib Union)	4.7%	$0	$45,000	-$45,000
Bushey (VG)	6.0%	$0	$45,000	-$45,000
Auditor of Accounts				
Flanagan (D)	52.2%	$58,239	$38,250	$19,989
Dwinnell (R)	38.9%	$63,309	$45,000	$18,309
Baker (Lib)	2.8%	$142	$45,000	-$44,858
Jackowski (Lib Union)	2.9%	$0	$45,000	-$45,000
Saetta (VG)	3.0%	$0	$45,000	-$45,000
Attorney General				
Sorrell (D)	83.8%	$11,431	$38,250	-$26,819
Costanzo (Lib)	4.5%	$1,231	$45,000	-$43,769
Fisher (Lib Union)	2.5%	$0	$45,000	-$45,000
Ward (VG)	8.8%	$0	$45,000	-$45,000

Table 18

Campaign Expenditures, Statewide Candidates, 1996

	vote %	total campaign expenditures	expenditure limit	difference with expenditure limit
Governor				
Dean (D)	70.5%	$191,203	$255,000	-$63,797
Gropper (R)	22.4%	$46,244	$300,000	-$253,756
Randall (Lib)	1.1%	$10,284	$300,000	-$289,716
Herbert (Lib Union)	1.6%	$454	$300,000	-$299,546
Lane (VG)	1.4%	$556	$300,000	-$299,444
St. John (I)	1.2%	$6,472	$300,000	-$293,528
Brunelle (Nat Law)	1.3%	$0	$300,000	-$300,000
Lt. Governor				
Racine (D)	54.0%	$138,418	$100,000	$38,418
Carroll (R)	41.0%	$171,690	$100,000	$71,690
Ngoima (Lib Union)	1.0%	$0	$100,000	-$100,000
Coleman (VG)	2.1%	$206	$100,000	-$99,794
Bate (Nat Law)	1.6%	$0	$100,000	-$100,000
Secretary of State				
Milne (R/D)	81.4%	$1,878	$38,250	-$36,372
Costanzo (L)	3.1%	$311	$45,000	-$44,689
Levy (Lib Union)	3.3%	$0	$45,000	-$45,000
De Pierro (VG)	7.4%	$13	$45,000	-$44,987
Wilder (Nat Law)	4.5%	$0	$45,000	-$45,000
Treasurer				
Douglas (R/D)	85.8%	$4,826	$38,250	-$33,424
Gottlieb (Lib Union)	3.5%	$0	$45,000	-$45,000
Bushey (VG)	7.0%	$0	$45,000	-$45,000
Bate (Nat Law)	3.4%	$0	$45,000	-$45,000
Auditor of Accounts				
Flanagan (D)	49.6%	$57,248	$38,250	$18,998
Morrissey (R)	39.1%	$26,928	$45,000	-$18,072
Baker (L)	2.3%	$513	$45,000	-$44,487
Davenport (Lib Union)	2.5%	$0	$45,000	-$45,000
Sweet (VG)	4.6%	$0	$45,000	-$45,000
McLaud (Nat Law)	1.5%	$0	$45,000	-$45,000
Attorney General				
Amestoy	87.2%	$3,987	$38,250	-$34,263
Diamondstone (Lib U)	3.5%	$0	$45,000	-$45,000
Kingston (VG)	6.0%	$0	$45,000	-$45,000
Huston (Nat Law)	3.0%	$0	$45,000	-$45,000

Table 19

Campaign Expenditures, Statewide Candidates, 1994

	vote %	total campaign expenditures	expenditure limit	difference with expenditure limit
Governor				
Dean (D)	68.6%	$183,300	$255,000	-$71,700
Kelly (R)	19.0%	$36,268	$300,000	-$263,732
Gottlieb (Lib Union)	0.8%	$0	$300,000	-$300,000
Lane (VG)	1.0%	$714	$300,000	-$299,286
Brunelle (Nat Law)	0.7%	$0	$300,000	-$300,000
Jaccaci (People VT)	0.9%	$720	$300,000	-$299,280
Brueckner (I)	0.9%	$0	$300,000	-$300,000
Morse (I)	7.0%	$113,427	$300,000	-$186,573
Lt. Governor				
Snelling (R)	50.2%	$115,719	$100,000	$15,719
Racine (D)	46.8%	$106,735	$100,000	$6,735
Haas (Lib Union)	1.3%	$0	$100,000	-$100,000
'ate (Nat Law)	1.4%	$0	$100,000	-$100,000
Secretary of State				
Milne (R)	50.0%	$26,733	$45,000	-$18,267
Hooper (D)	42.1%	$39,743	$38,250	$1,493
Herbert (Lib Union)	4.6%	$0	$45,000	-$45,000
Padilla (Nat Law)	3.0%	$0	$45,000	-$45,000
Treasurer				
Douglas (D)	91.4%	$4,485	$38,250	-$33,765
Ngoima (Lib Union)	3.6%	$0	$45,000	-$45,000
Schumacher (Nat Law)	4.8%	$0	$45,000	-$45,000
Auditor of Accounts				
Flanagan (D)	52.0%	$32,383	$45,000	-$12,617
Thorn (R)	38.5%	$11,698	$45,000	-$33,302
Davenport (Lib Union)	3.9%	$0	$45,000	-$45,000
McLaud (Nat Law)	1.7%	$0	$45,000	-$45,000
Redden (VG)	3.6%	$0	$45,000	-$45,000
Attorney General				
Amestoy (R/D)	87.1%	$3,373	$38,250	-$34,877
Diamondstone (Lib U)	5.5%	$0	$45,000	-$45,000
Mulchay (Nat Law)	3.7%	$0	$45,000	-$45,000
Talcott (VG)	3.4%	$0	$45,000	-$45,000

Table 20

Campaign Expenditures State Senate Candidates

	Total spent on campaigns	Average spent	Spending Limit	Ave. spent minus limit
1998				
All candidates	$551,328	$7,450		
Incumbents	$249,740	$8,919		
Nonincumbents	$302,711	$6,441		
Democrats	$229,523	$8,828		
Republicans	$310,575	$9,705		
1 seat	$40,365	$5,766	$4,000	$1,766
2 seats	$163,143	$5,827	$6,500	-$673
3 seats	$194,937	$8,122	$9,000	-$878
6 seats	$152,883	$10,192	$16,500	-$6,308
1996				
All candidates	$492,064	$7,689		
Incumbents	$144,802	$7,621		
Nonincumbents	$324,600	$7,549		
Democrats	$243,935	$8,131		
Republicans	$222,359	$7,941		
1 seat	$23,347	$5,837	$4,000	$1,837
2 seats	$130,024	$5,910	$6,500	-$590
3 seats	$144,475	$6,880	$9,000	-$2,120
6 seats	$171,556	$11,437	$16,500	-$5063
1994				
All candidates	$392,170	$5,853		
Incumbents	$173,682	$8,271		
Nonincumbents	$218,488	$4,750		
Democrats	$150,337	$5,184		
Republicans	$229,022	$8,179		
1 seat	$21,147	$4,229	$4,000	$229
2 seats	$101,427	$4,057	$6,500	-$2,443
3 seats	$147,660	$6,152	$9,000	-$2,848
6 seats	$121,937	$9,380	$16,500	-$7,120

Table 21

Campaign Expenditures House Candidates

	Total spent on campaigns	Average spent	Expenditure limits	Ave. Spent minus limit
1998				
All candidates	$369,110	$1,352	$2,000	-$648
Incumbents	$150,618	$1,177	$1,800	-$623
Nonincumbents	$218,492	$1,507	$2,000	-$493
Democrats	$143,897	$1,151	$2,000	-$849
Republicans	$203,960	$1,619	$2,000	-$381
Progressives	$7,960	$1,592	$2,000	-$408
Independents	$3,664	$733	$2,000	-$1,267
1 seat	$193,811	$1,526	$2,000	-$474
2 seats	$175,299	$1,201	$3,000	-$1,799
1996				
All candidates	$236,855	$1,528	$2,000	-$472
Incumbents	$85,591	$1,451	$1,800	-$349
Nonincumbents	~~$239,141~~	$1,533	$2,000	-$467
Democrats	$126,731	$1,584	$2,000	-$416
Republicans	$103,156	$1,453	$2,000	-$547
Progressives	$6,903	$2,301	$2,000	$301
Independents	$2,351	$1,176	$2,000	-$824
1 seat	$125,703	$1,676	$2,000	-$324
2 seats	$111,152	$1,389	$3,000	-$1,611
1994				
All candidates	$322,812	$1,448	$2,000	-$552
Incumbents	$67,423	$887	$1,800	-$913
Nonincumbents	$255,389	$1,737	$2,000	-$263
Democrats	$95,080	$980	$2,000	-$1,020
Republicans	$210,677	$2,150	$2,000	$150
Progressives	$6,858	$2,286	$2,000	$286
Independents	$6,832	$569	$2,000	-$1,431
1 seat	$192,936	$2,010	$2,000	$10
2 seats	$129,876	$1,023	$3,000	-$1,977

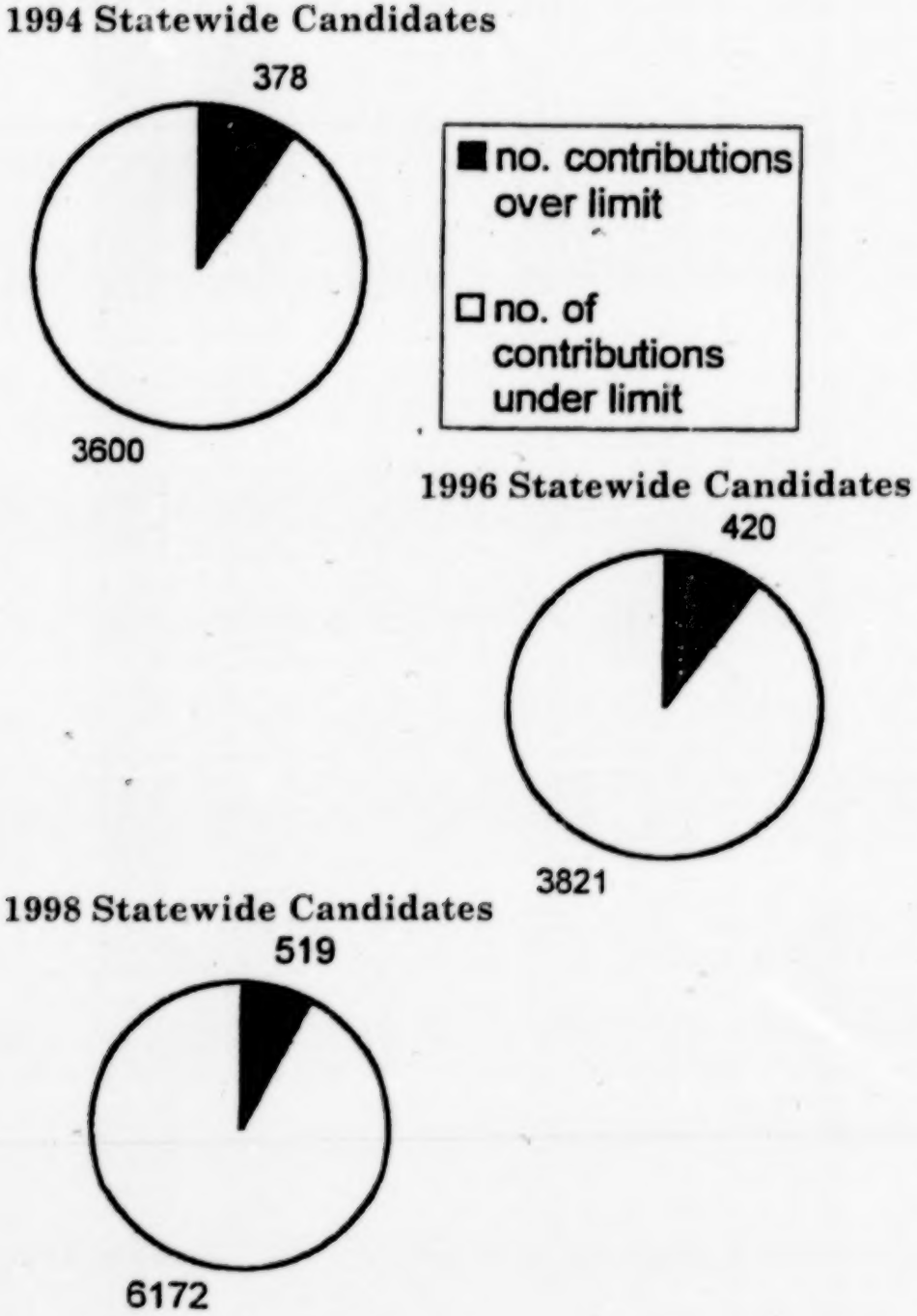

Figure 1s: Contributions to statewide candidates over and under the Act 64 Limits

Source: Table 2 in Gierzynski Report

Table 13

Effect of Out of State Limits on Statewide Candidates' Revenues, 1998

	Vote %	Total revenue	Out of state contributions	% of total Revenue
Governor				
Dean	55.7%	$342,403	$144,706	42.3%
Dwyer	41.1%	$252,511	$49,150	19.5%
Lt. Governor				
Racine	48.6%	$115,838	$9,341	8.1%
Snelling	48.1%	$116,879	$14,555	12.5%
Secretary of State				
Markowitz	47.8%	$52,300	$14,614	27.9%
Milne	45.2%	$17,623	$5,994	34.0%
Treasurer				
Douglas	85.4%	$9,948	$0	0.0%
Auditor of Accounts				
Flanagan	52.2%	$58,831	$39,006	66.3%
Dwinnell	38.9%	$37,505	$6,300	16.8%
Attorney General				
Sorrell	83.8%	$21,484	$383	1.8%

Note: None of the third party or independent candidates received any contributions from outside of Vermont in 1998.

Table 14

Effect of Out of State Limits on Statewide Candidates' Revenues, 1996

	Vote %	Total revenue	Out of state contributions	% of total revenue
Governor				
Dean	70.5%	$395,424	$205,659	52.0%
Gropper	22.4%	$45,698	$4,350	9.5%
Lt. Governor				
Racine	54.0%	$108,274	$2,500	2.3%
Carroll	41.0%	$176,052	$32,275	18.3%
Secretary of State				
Milne	81.4%	$3,035	$0	0.0%
Treasurer				
Douglas	85.8%	$8,583	$0	0.0%
Auditor of Accounts				
Flanagan	49.6%	$79,352	$35,485	44.7%
Morrissey	39.1%	$30,025	$1,900	6.3%
Attorney General				
Amestoy	87.2%	$9,110	$5,100	56.0%

Note: None of the third party or independent candidates received any contributions from outside of Vermont in 1996.

Table 15

Effect of Out of State Limits on Statewide Candidates' Revenues, 1994

	Vote %	Total revenue	Out of state contributions	% of total revenue
Governor				
Dean	68.6%	$368,117	$223,739	60.8%
Kelly	19.0%	$38,426	$750	2.0%
Lt. Governor				
Snelling	50.2%	$149,813	$15,650	10.4%
Racine	46.8%	$88,185	$2,400	2.7%
Secretary of State				
Milne	50.0%	$18,946	$800	4.2%
Hooper	42.1%	$29,875	$13,900	46.5%
Treasurer				
Douglas	91.4%	$8,436	$0	0.0%
Auditor of Accounts				
Flanagan	52.0%	$14,770	$10,125	68.6%
Thorn	38.5%	$11,968	$450	3.8%
Attorney General				
Amestoy	87.1%	$4,550	$1,750	38.5%

Note: None of the third party or independent candidates received any contributions from outside of Vermont in 1994 except for Thomas Morse (I) who received $28 (or 2% of his revenues) from out of state.

Table 16

Effect of Out of State Limits on State Senate and House Candidates' Revenues

		average revenues from out of state	average % out of state
Senate			
	1994	$552	7.5%
	1996	$514	9.0%
	1998	$114	0.9%
House			
	1994	$27	1.7%
	1996	$48	2.6%
	1998	$69	2.2%

Note: the 1998 "average % out of state" cells were calculated differently from the 1994 and 1996 due to data limitations. The 1998 average % is actually the % of total revenue raised from out of state sources. Both methods result in similar numbers for 1994 and 1996. The 0.9% for 1998 does represent a significant drop in identifiable out of state contributions.

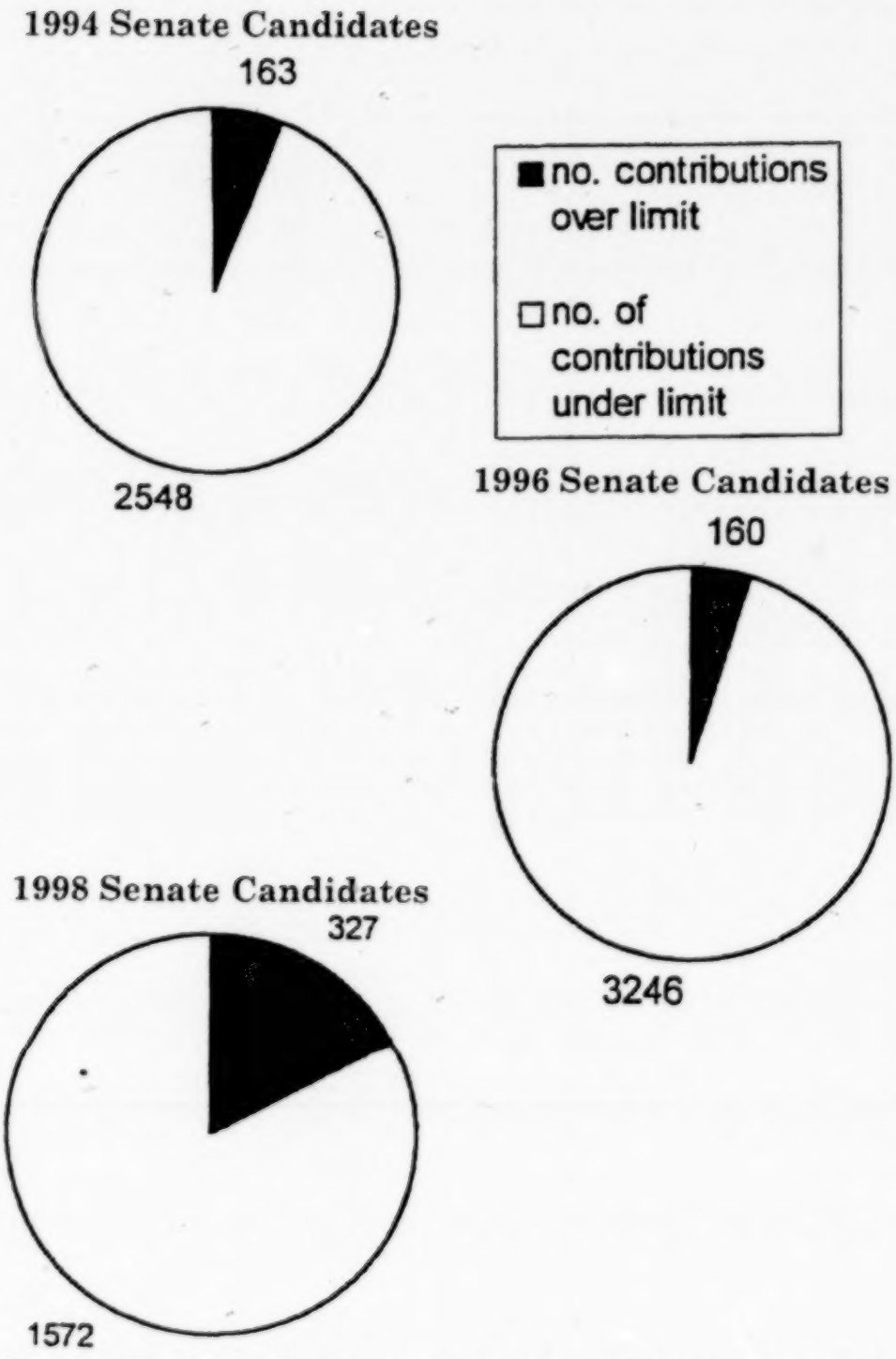

Figure 2s: Contributions to senate candidates over and under the Act 64 Limits

Source: Table 2 in Gierzynski Report

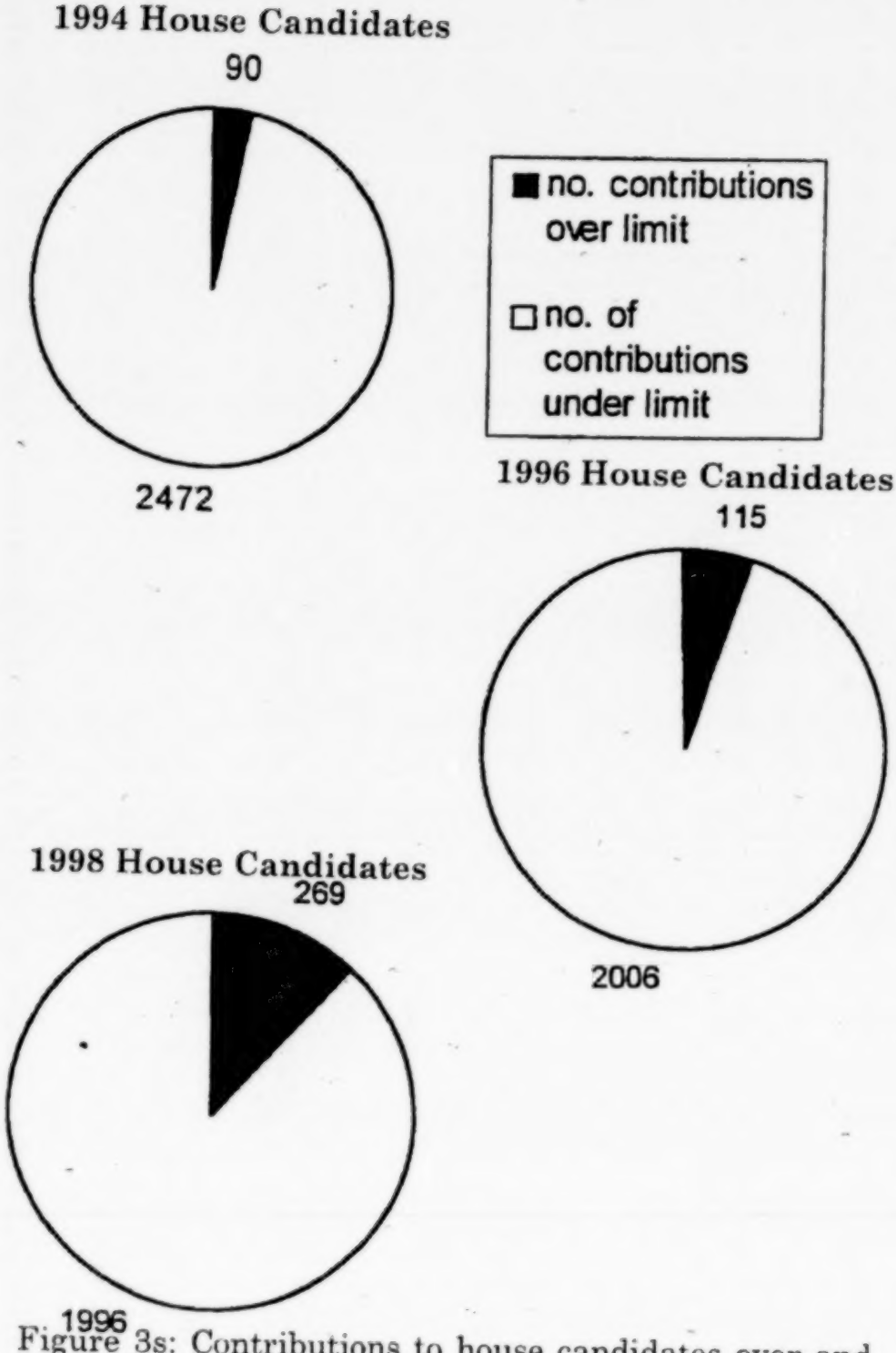

Figure 3s: Contributions to house candidates over and under the Act 64 Limits

Source: Table 2 in Gierzynski Report

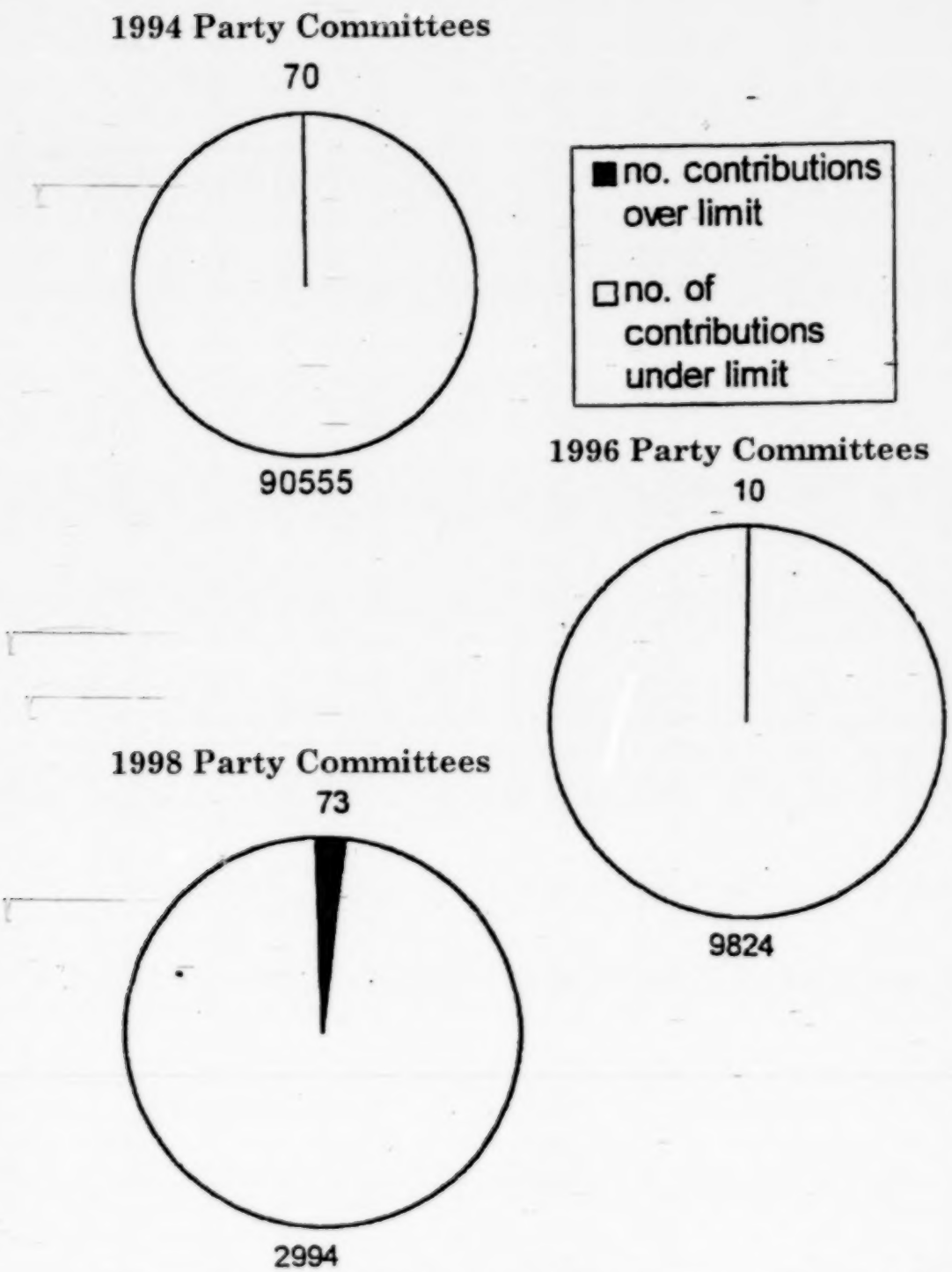

Figure 4s: Contributions to political party committees over and under the Act 64 Limits

Source: Table 2 in Gierzynski Report

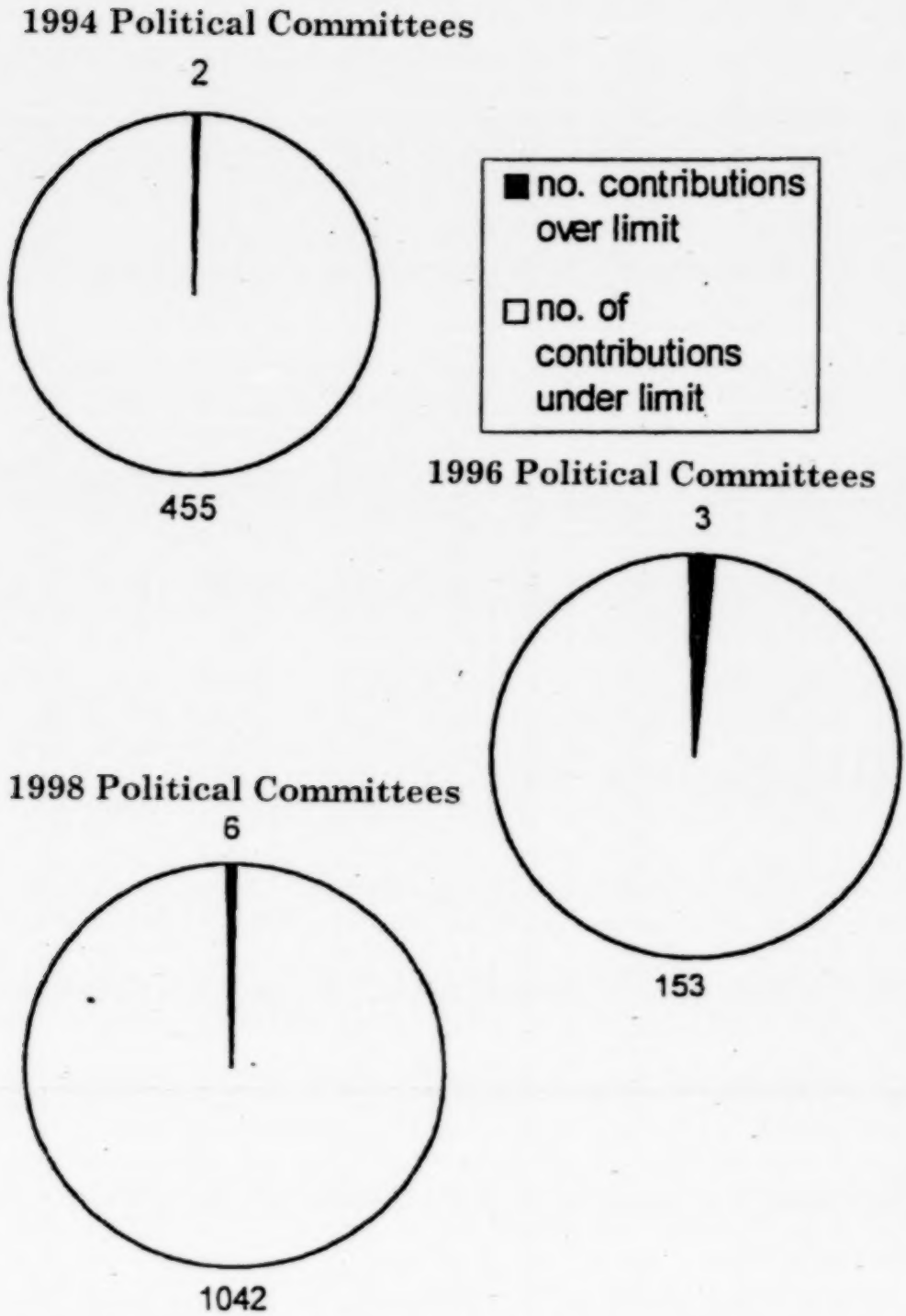

Figure 5s: Contributions to political committees over and under the Act 64 Limits

Source: Table 2 in Gierzynski Report

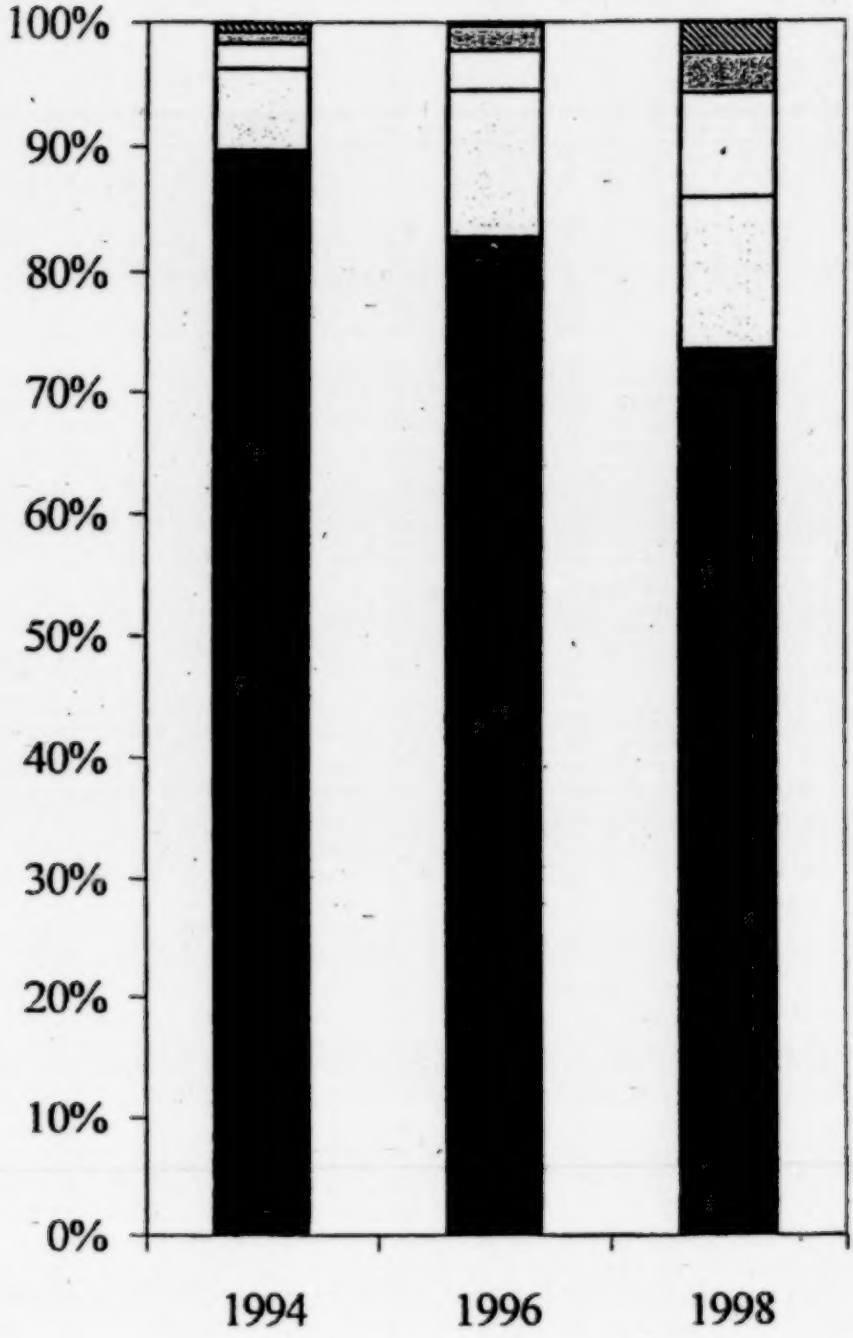

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Figure: House Candidates and the Number of Contributions Affected by Contribution Limits, 1994-1998

Source: Tables 8-9 in Gierzynski Report

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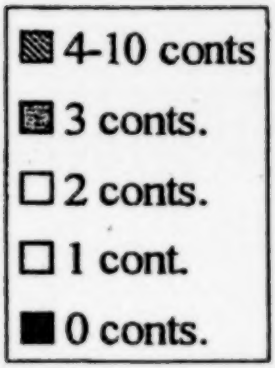

Figure: House Candidates and the Number of Contributions Affected by Contribution Limits, 1994-1998

Source: Tables 8-9 in Gierzynski Report

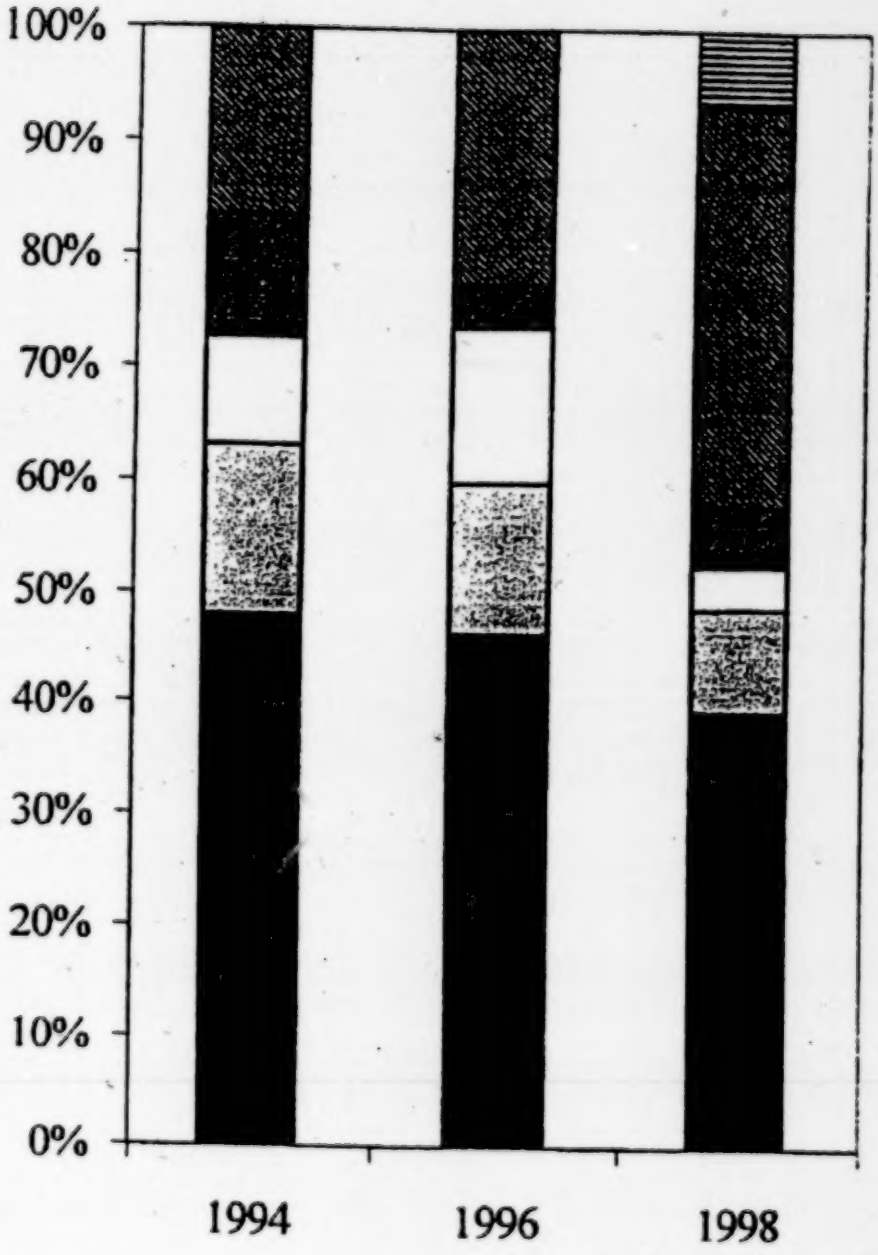

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Figure: Senate Candidates and the Number of Contributions Affected by Contribution Limits, 1994-1998

Source: Tables 8-9 in Gierzynski Report

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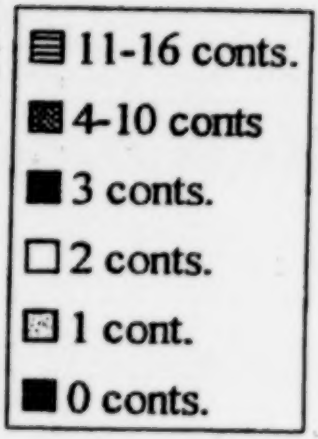

Figure: Senate Candidates and the Number of Contributions Affected by Contribution Limits, 1994-1998

Source: Tables 8-9 in Gierzynski Report

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2004

Docket Nos. 00-9159 (L), 00-9180 (Con), 00-9231 (xap), 00-9239 (xap), & 00-9240 (xap)

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 11th day of May, two thousand and five.

MARCELLA LANDELL,

Plaintiff-Appellee,

DONALD R. BRUNELLE, VERMONT RIGHT TO LIFE COMMITTEE, INC., Political Committee, NEIL RANDALL, GEORGE KUUSELA, STEVE HOWARD, JEFFREY A. NELSON, JOHN PATCH, VERMONT LIBERTARIAN PARTY, VERMONT REPUBLICAN STATE COMMITTEE and VERMONT RIGHT TO LIFE COMMITTEE-FUND FOR INDEPENDENT POLITICAL EXPENDITURES,

Plaintiffs-Appellees-Cross-Appellants,

- - v. - -

WILLIAM H. SORRELL, JOHN T. QUINN, WILLIAM WRIGHT, DALE O. GRAY, LAUREN BOWERMAN, VINCENT ILLUZZI, JAMES HUGHES, GEORGE E. RICE, JOEL W. PAGE, JAMES D. MCNIGHT, KEITH W. FLYNN, JAMES P. MONGEON, TERRY TRONO,

DAN DAVIS, ROBERT L. SAND and DEBORAH L. MARKOWITZ,

Defendants-Appellants-Cross-Appellees,

VERMONT PUBLIC INTEREST RESEARCH GROUP, LEAGUE OF WOMEN VOTERS OF VERMONT, RURAL VERMONT, VERMONT OLDER WOMEN'S LEAGUE, VERMONT ALLIANCE OF CONSERVATION VOTERS, MIKE FIORILLO, MARION GREY, PHIL HOFF, FRANK HUARD, KAREN KITZMILLER, MARION MILNE, DARYL PILLSBURY, ELIZABETH READY, NANCY RICE, CHERYL RIVERS and MARIA THOMPSON,

Intervenors-Defendants-Appellants-Cross-Appellees.

ORDER

Plaintiff-appellee and plaintiffs-appellees-cross-appellants filed a petition for rehearing with request for rehearing en banc from the amended opinion of the panel filed on August 18, 2004. A poll on whether to rehear the case en banc was conducted among the active judges of the court upon the request of an active judge of the court. Because a majority of the court's active judges voted to deny rehearing en banc, rehearing en banc was **DENIED** by order of the court filed on February 11, 2005, and amended on April 11, 2005, and April 20, 2005.

The court hereby **AMENDS** that order to reflect that, upon, consideration by the panel that decided the appeal, as of the date of that order, the petition for rehearing was **DENIED.** Judge Winter dissents from the denial of rehearing.

The court also **AMENDS** the February 11, 2005, order to reflect (1) the opinions concurring in the court's denial of rehearing en banc filed by Judge Calabresi, Judges Straub and Pooler, and Judges Sack and Katzmann, and (2) the opinions dissenting from the court's denial of rehearing en banc filed by Chief Judge Walker, Judge Jacobs, Judge Cabranes, and Judge Raggi.

Judges Calabresi, Straub, Pooler, Sack, Sotomayor, Katzmann, and B.D. Parker concur in the denial of rehearing en banc. Chief Judge Walker and Judges Jacobs, Cabranes, Raggi, and Wesley dissent from the denial of rehearing en banc. With this order, Judge Calabresi is filing a concurring opinion; Judges Straub and Pooler are filing a concurring opinion; Judges Sack and Katzmann are filing a concurring opinion, in which Judges Sotomayor and B.D. Parker join; Chief Judge Walker is filing a dissenting opinion, in which Judge Jacobs, Cabranes, and Wesley join; Judge Jacobs is filing a dissenting opinion, in which Chief Judge Walker and Judges Cabranes and Wesley join; Judge Cabranes is filing a dissenting opinion, in which Chief Judge Walker and Judges Jacobs and Wesley join; and Judge Raggi is filing a dissenting opinion.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/_____
Richard Alcantara, Deputy Clerk

CALABRESI, *Circuit Judge*, concurring in the denial of rehearing en banc.

I.

The prudential reasons given in the thoughtful opinion of Judge Sack and Judge Katzmann, *infra* at 14, would, in themselves, justify concurring in a denial of a rehearing en banc. I write separately, though, because I have an additional and rather different reason for voting against such a rehearing.

It seems to me that there are two principal values at play in the campaign finance debate. One is the desire to let individuals express the intensity of their political feelings, and to do so in a very particular way — that is, through money in the form of either campaign expenditures or contributions. This value has been consistently treated as deserving of First Amendment protection. *See, e.g., McConnell v. Federal Election Commission*, 540 U.S. 93, 134-38 (2003); *Buckley v. Valeo*, 424 U.S. 1, 19-22 (1976). Nonetheless, it is not absolute. For example, no one argues that a state is precluded from prohibiting the purchase of votes, even though buying votes amounts to the most direct way in which intensity of feeling can be expressed through the use of money. *See* 42 U.S.C. § 1973i(c). *Cf. Brown v. Hartlage*, 456 U.S. 45, 54-55 (1982).[1]

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[1]One could argue that *Buckley* expressed skepticism toward characterizing "intensity" of political feeling, as manifested by the amount of money spent, as an *independent* First Amendment value. Thus, with respect to political contributions, *Buckley* stated that "[t]he quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing." *Buckley v. Valeo*, 424 U.S. 1, 21 (1976). Moreover, even with respect to campaign *expenditures*, much of *Buckley's* focus was on the impact that restricting the purchase of speech, by a candidate or other advocate, would have on the "marketplace of ideas," rather than on

The other value is the deeply felt desire not to have the wealthy be able to influence elections more than the poor.[2] This value, however, has two distinct aspects. The first is the generalized egalitarian desire not to advantage one group in society over another. The second — which is inextricably linked to the "intensity of expression" value and hence partakes of its First Amendment attributes — is that, given the unequal distribution of wealth, money does not measure intensity of desire equally for rich and poor. In other words, and crucially,

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the diminishment of the speaker's unilateral right to communicate his or her belief, and the intensity thereof. *See, e.g., id.* at 19-20, 47-48, 52-53.

Nevertheless, and at times in tension with its statements concerning "undifferentiated, symbolic" acts of contribution, the *Buckley* Court clearly stated that the *quantity* and *volume* of individual political expression through contributions *and* expenditures was a protected First Amendment interest. Thus, in invalidating limitations on independent expenditures (often made by PACs), *Buckley* noted that the restrictions "preclude[d] most associations from *effectively amplifying the voice of their adherents*," and therefore were not only an interference with the groups' speech rights, but were "simultaneously an interference with the freedom of (their) adherents." *Id.* at 22 (internal quotations and citation omitted) (emphasis added). *Buckley* also said that spending caps directly interfere with the spender's "right to speak" his or her mind and "to engage in vigorous advocacy" in the course of an election, and it described these as rights that are "no less entitled to protection under the First Amendment than the discussion of political policy generally." *Buckley*, 424 U.S. at 48 (internal quotations and citations omitted); *see also Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 493 (1985) ("[F]or purposes of presenting political views in connection with a nationwide Presidential election, allowing the presentation of views while forbidding the expenditure of more that $1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system.").

[2]My "wealthy" and "poor" nomenclature is, of course, shorthand. The same analysis applies with as great of force to members of the middle class.

a large contribution by a person of great means may influence an election enormously, and yet may represent a far lesser intensity of desire than a pittance given by a poor person. *Cf. Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 257-58 (1986) (discussing the "threat" posed to the "political marketplace" by corporate spending where "[t]he resources in the treasury of a business corporation" do not directly correlate to intensity of "popular support for the corporation's political ideas"). This way of looking at things is anything but new. *See, e.g., Luke* 21:3-4 (English Standard Version) ("Truly, I tell you, this poor widow has put in more than all of them. For they all contributed out of their abundance, but she out of her poverty put in all she had to live on.").[3] Significantly, though, this second aspect is reflective not only of egalitarian concerns, but as much of First Amendment libertarian ones.

The notion that intensity of desire is not well-measured by money in a society where money is not equally distributed has been, since *Buckley*, the huge elephant — and donkey — in the living room in all discussions of campaign finance reform. *Buckley*, by fiat, declared the state's explicit recognition and amelioration of wealth distribution problems in the electoral marketplace to be an insufficiently compelling interest to pass constitutional muster. *Buckley*, 424 U.S. at 17, 48-49. And yet, I submit, it remains at least implicitly behind

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[3] *See also Buckley*, 424 U.S. at 21-22 & n.22 (noting that "[a]t most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate," and that "[o]ther factors relevant to an assessment of the 'intensity' of the support indicated by a contribution include the contributor's financial ability and his past contribution history."). *But see id.* at 56 (observing that unlimited campaign expenditures are appropriate in part because, given contribution limitations, "the financial resources available to a candidate's campaign . . . will normally vary with the size and intensity of the candidate's support").

much campaign finance reform legislation.

The odd thing about *Buckley's* exclusion of this interest from the field of discussion is that, as mentioned above, this concern is in part directly linked to the Supreme Court's asserted First Amendment concern — the desire to protect the right for people to express, in money terms, the intensity of their political ideas and affiliations. It may be that the High Court's failure to recognize this fact occurred because the Court in *Buckley* focused its attention on the desire not to favor one group, the rich, over another, the poor — or vice versa, *see id.* at 48-49. And, in deciding not to give weight to that value, the Court failed to realize that it was also excluding — as a potentially compelling state interest — the First Amendment right to have one's intensity of desire, as expressed in monetary terms, be measured equally.

Be that as it may, the *Buckley* framework, which establishes that the desire to express intensity of political position through money is fundamental, at the same time prohibits the states from seeking to find a way of gauging and treating intensity of desire equally among its citizens, rich and poor.[4] As a result of this odd decision, the

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[4]Of course, it remains true that money is not the only means by which intensity of political belief may be expressed. In light of this obvious fact, it may perhaps be asserted that there is no compelling interest in giving individuals who lack financial resources an ability equal to that afforded to wealthier individuals to express intensity of feeling in the monetary marketplace of political discourse. But then the converse must also be true. That is, people or entities of means, whose contributions and expenditures campaign finance legislation might seek to limit, also enjoy alternate mechanisms for expressing the intensity of their political beliefs. And, if there is nothing uniquely important, in a First Amendment context, about expressing intensity of belief in monetary terms for those who do not have money, the same must presumably be true for those who do. In either case, though, the centrality of money in political campaigns makes it a uniquely important mechanism by which intensity of political belief is expressed. *Cf. Buckley*, 424 U.S. at 18 n.17 (observing that the

judicial discussion since *Buckley* has centered on other values, which, though by no means unimportant, are, I believe, not really at the core of the debate. There is much talk of "corruption" and what controls are necessary to avoid it, and of the danger that what is done under the guise of controlling corruption may be used to protect incumbents. There is, likewise, concern about the cost of fundraising and similar factors. I do not mean to suggest that these are not serious questions. But a treatment of campaign financing that focuses primarily on those issues is surely impoverished, for it does not deal with what is at least as important, and, perhaps, at the very heart of the problem.

Indeed, because of *Buckley*, even academicians have focused on campaign finance reform primarily in the light of these subsidiary goals. Thus, some have tried to "solve" the campaign finance problem by providing for anonymous contributions. *See, e.g.*, Ian Ayres & Jeremy Bulow, The Donation Booth: Mandating Donor Anonymity to Disrupt the Market for Political Influence, 50 Stan. L. Rev. 837 (1988). But that does nothing to ameliorate the fact that "intensity of desire" under *Buckley* depends on the underlying wealth of the donor, and hence is measured by a rubber yard stick. And this is so regardless of whether the donation is made openly or secretly. Others, trying to avoid corruption and protection of incumbents, and also to counter the advantage *Buckley* gave to the rich, seek to overwhelm individual contributions with

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argument that "just as the decibels emitted by a sound truck can be regulated consistently with the First Amendment," so too may the "volume of dollars in political campaigns" be constitutionally restricted "underscores a fundamental misconception. The decibel restriction . . . limit[s] the manner of operating a soundtruck but not the extent of its proper use. By contrast, the [Federal Election Campaign] Act's dollar ceilings restrict the extent of the reasonable use of virtually every means of communicating information.").

massive funds made available to everyone for campaign spending. *See, e.g.*, Bruce Ackerman, Crediting the Voters: A New Beginning for Campaign Finance Reform, Am. Prospect, Spring 1993, at 71; Edward B. Foley, Equal-Dollars-Per-Voter: A Constitutional Principle of Campaign Finance Reform, 94 Colum. L. Rev. 1204 (1994). But they do so in a way that undercuts the capacity of people, *both* poor and rich, to give financial expression to the relative intensity of their desire. Moreover, even the most sophisticated "hybrid" campaign finance proposals, in advocating complex combinations of donor anonymity, public funding, and controlled private giving, do not directly address this difficulty. *See, e.g.*, Bruce Ackerman & Ian Ayres, Voting with Dollars: A New Paradigm for Campaign Finance 25-44 (2002).

Solutions that take into account both (a) the perceived need to protect the right to express one's intensity of desire in political matters through (among other mechanisms) money, and, at the same time, (b) the wish to measure and give effect to that intensity of desire in a way that is fair to the rich and the poor alike, are not obvious. Some potentially fruitful, if logistically challenging, suggestions have been made in other contexts. *See, e.g.*, Philip Bobbit & Guido Calabresi, Tragic Choices 98-117 (1978) (discussing possibilities and limitations of wealth-distribution-neutral markets). But it remains the case that the finding of such solutions in the world of campaign financing has been, and will continue to be, severely hampered if the discussion taking place in legislatures and courthouses is centered — as it now is — not on the problem, but on collateral issues.

This is so, moreover, even if one considers those issues that I described as "collateral" — corruption, incumbent protection, fundraising, time, etc. — to be, themselves, of primary importance. Efforts to tailor all campaign finance reform to corruption — the one state interest

heretofore recognized by the Supreme Court as sufficiently compelling to justify spending restrictions of any sort[5] — surely have constrained possibilities for creative proposals that may not fit comfortably into the proffered box.

II.

I believe that it is not out of the question that Vermont, in passing Act 64, was as likely to be concerned with the goal of enabling of all Vermonters — be they political candidates or political contributors — to have something of an "equal" opportunity to express intensity of political desire, as it was with the possibility of corruption, saving time, or on the alleged desire to protect incumbents. *Cf. Landell v. Sorrell*, 382 F.3d 91, 100-02 (2d Cir. 2004) (setting forth legislative findings in support of Act 64, including: (1) that "[a]s a result [of the rising cost of campaigns] many Vermonters are financially unable to seek election to public office"; (2) that "large contributors" gain time and access to candidates to an extent that "those who make small or no contributions" do not; and (3) that "public financing of campaigns, coupled with generally applicable contribution and expenditure limitations, will level the financial playing field among candidates and provide resources to independent candidates"). Indeed, I think that in Vermont, no less than in other places, interests and values such as corruption and time-saving are often defined in expansive ways so as to allow the introduction (under *Buckley*'s doctrinal radar) of values that are directly related (1) to the wish to protect the right to express through money the intensity of one's desire, and (2) to make sure that

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[5] *Cf. National Conservative Political Action Committee*, 470 U.S. at 496-97 ("[P]reventing corruption or the appearance of corruption are the only legitimate and compelling interests *thus far identified* for restricting campaign finances." (emphasis added)).

that intensity is not measured differently for rich and for poor.[6]

I cannot help but suspect, however, that the sort of conversation taking place in Vermont (and elsewhere) would be a far more fruitful one — from the standpoints both of campaign finance policy and constitutional jurisprudence — were it able to be brought out from under *Buckley*'s corruption mantle and into a framework that more honestly reflects the issues at play.

III.

I do not know whether the decision of the panel in the case before us is consistent with *Buckley v. Valeo*. I do know that if I were on a panel I would have to decide that question, for I would be bound to follow *Buckley*, however much I think that that decision has diverted the campaign finance reform discussion from the fundamental First Amendment-level values at stake. If I am called upon to vote on a panel, I, of course, follow what I believe the Supreme Court to have held, and I do so whether or not I agree with that holding.

A vote on whether to grant an en banc rehearing, instead, is a "free vote." As the concurring opinion by Judge Sack and Judge Katzmann so elegantly points out, *infra* at 15-18, we may decline to vote to go en banc for any number of reasons, and we need not vote to rehear a

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[6]The Supreme Court itself has seemingly endorsed a broader understanding of the "corruption" rationale than what *Buckley* enunciated — an understanding that could perhaps be read as gesturing toward some of the "equality" considerations that *Buckley* purportedly purged from the debate. Thus, the Court in *Shrink*, rejecting the notion that "corruption" encompassed solely the notion of quid-pro-quo contribution arrangements, announced that the interest encompassed "the *broader threat from politicians too compliant with the wishes of large contributors*" — that is to say, politicians who give *unequal* weight to constituents on the basis of wealth. 528 U.S. at 389 (emphasis added); *see also McConnell*, 540 U.S. at 143, 150-52 (2004).

case en banc simply because we think that an opinion is wrong or is possibly inconsistent with a prior Supreme Court decision. There are many prudential considerations thatmay, in different circumstances, properly guide us in ourconsideration of whether an en banc is appropriate. And so, in deciding whether to vote to rehear *this* case en banc, I posed myself the following question: which vote is most likely to bring back into the discussion the issues that I believe to be fundamental with respect to campaign finance legislation?

Ultimately, only the Supreme Court can, by reconsidering *Buckley*, encourage a free and open discussion of what is moving states in this field, and of what ways there might be of best serving the apparently conflicting interests at stake. Not surprisingly, a majority of the Supreme Court itself has indicated an inclination to reopen the question. *See Federal Election Commission v. Colorado Republican Party*, 533 U.S. 431, 465 (2001) (Thomas, *J.*, dissenting) (stating, joined by Justices Kennedy and Scalia, that "*Buckley v. Valeo* . . . should be overruled"); *Shrink*, 528 U.S. at 398-99 (2000) (Stevens, *J.*, concurring) (suggesting disagreement with *Buckley*'s "[r]eliance on the First Amendment framework to justify the invalidation of campaign finance regulations"); *id.* at 405 (Breyer, *J.*, concurring) (stating, joined by Justice Ginsburg, that reconsideration of *Buckley* may be necessary); *id.*, 528 U.S. at 410 (Kennedy, *J.*, dissenting) ("[T]he existing distortion of speech caused by the halfway house we created in *Buckley* ought to be eliminated."). And some have even urged reconsideration on grounds that could potentially recognize the need for equality in gauging intensity of desire in monetary terms. *See, e.g., id.* at 401 (Breyer, *J.*, concurring) ("[B]y limiting the size of the largest contributions, such restrictions aim to democratize the influence that money itself may bring to bear on the electoral process." (citing *Reynolds v. Sims*,

377 U.S. 533, 565 (1964), thereby linking campaign finance jurisprudence to one-person, one-vote jurisprudence)).

I believe such a reconsideration to be essential. And, because I conclude that a reconsideration is more likely to occur if we do *not* rehear this case en banc than if we do, I concur in the denial of such a rehearing.

*****

REENA RAGGI, *Circuit Judge*, dissenting from the denial of rehearing en banc:

I dissent from the court's denial of rehearing en banc without joining in the thoughtful opinions of my dissenting colleagues. I think that this case presents serious questions that warrant further consideration by the whole court, but I am disinclined to express an opinion on the merits without the benefit of further briefing and argument.

No. 04-1530
(consolidated with 04-1528, 04-1697)

In The
Supreme Court of the United States

VERMONT REPUBLICAN STATE COMMITTEE, *et al.*,
Petitioners,
v.
WILLIAM SORRELL, *et al.*, *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Brief for Petitioners Vermont Republican State Committee, et al.

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December 14, 2005

Questions Presented

1. Whether Vermont's mandatory candidate expenditure limits violate the freedom of political speech guaranteed by the First and Fourteenth Amendments to the United States Constitution.

2. Whether Vermont's $200-$400 limits per election cycle on campaign contributions to state candidates violate the freedoms of political speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution because they are unconstitutionally low.

3. Whether Vermont's presumption of coordination, which provides that an expenditure made by a political party or political committee that primarily benefits six or fewer candidates is presumed to be a related expenditure subject to contribution limits, violates the freedoms of political speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Parties to the Proceeding

The following individuals and entities are parties to the proceeding in the court below:

Petitioners are Plaintiffs Vermont Republican State Committee, Vermont Right to Life Committee, Inc., Political Committee, Vermont Right to Life Committee –Fund for Independent Political Expenditures, Marcella Landell, and Donald R. Brunelle.

Consolidated Petitioners in 04-1528 are Plaintiffs Neil Randall, George Kuusela, Steve Howard, Jeffrey A. Nelson, John Patch and Vermont Libertarian Party.

Respondents are Defendants William H. Sorrell, John T. Quinn, William Wright, Dale O. Gray, Lauren Bowerman, Vincent Illuzzi, James Hughes, George E. Rice, Joel W. Page, James D. McNight, Keith W. Flynn, James P. Mongeon, Terry Trono, Dan Davis, Robert L. Sand and Deborah Markowitz.

Consolidated Petitioners in 04-1697 and Respondents are Defendant-Intervenors Vermont Public Interest Research Group, League of Women Voters of Vermont, Rural Vermont, Vermont Older Women's League, Vermont Alliance of Conservation Voters, Mike Fiorillo, Marion Grey, Phil Hoff, Frank Huard, Karen Kitzmiller, Marion Milne, Daryl Pillsbury, Elizabeth Ready, Nancy Rice, Cheryl Rivers and Maria Thompson.

Corporate Disclosure Statement

In accord with Supreme Court Rule 29.6, Petitioners state that the Vermont Republican State Committee, Vermont Right to Life Committee, Inc., Political Committee, and Vermont Right to Life Committee–Fund for Independent Political Expenditures are not corporations, but are associations.

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